

Public Comments

Meeting: Establishment of a Public Consumer  
Product Safety Incident Database; Public Workshop

CPSC-2009-0112

# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0002

Comment from Ed Desmond

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## Submitter Information

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**Submitter's Representative:** Ed Desmond

**Organization:** Toy Industry Association

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## General Comment

January 4, 2010

Mary Kelsey, Director of IT Planning and Policy

U.S. Consumer Product Safety Commission

4330 East West Highway

Bethesda, MD 20814

Re: OUTLINE OF PANEL COMMENTS ON ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY INCIDENT DATABASE UNDER CPSIA SECTION 212

The Toy Industry Association ("TIA") appreciates the opportunity to provide feedback and input with respect to the issues raised in the CPSC "Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008" (the "Report to Congress") regarding the implementation of a searchable consumer product safety incident database, currently bearing the working name SaferProducts.gov. On behalf of its more than 550 U.S. toy manufacturers and importers, the TIA offers the following initial comments, setting forth in more detail the issues that it will be presenting in a necessarily limited manner at the public hearing. TIA reserves the

right to supplement or amend its comments as appropriate.

Thank you.

Ed Desmond on behalf of TIA

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## Attachments

**CPSC-2009-0112-0002.1:** Comment from Ed Desmond



January 4, 2010

Mary Kelsey, Director of IT Planning and Policy  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: OUTLINE OF PANEL COMMENTS ON ESTABLISHMENT OF A PUBLIC  
CONSUMER PRODUCT SAFETY INCIDENT DATABASE UNDER CPSIA  
SECTION 212**

The Toy Industry Association appreciates the opportunity to provide feedback and input with respect to the issues raised in the CPSC "Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008" (the "Report to Congress") regarding the implementation of a searchable consumer product safety incident database, currently bearing the working name SaferProducts.gov. On behalf of its more than 550 U.S. toy manufacturers and importers, the Toy Industry Association ("TIA") offers the following comments, setting forth in more detail the issues that it will be presenting in a necessarily limited manner at the public hearing. TIA reserves the right to supplement or amend its comments as appropriate.

Section 212 of CPSIA requires the U.S. Consumer Product Safety Commission (CPSC) to implement a publicly accessible, searchable database of consumer product incident reports. The database will permit consumers, government agencies, health care professionals, child service providers, and public entities to submit reports of harm relating to the use of products regulated by the CPSC. The CPSIA requires that a report include, at minimum: (1) a description of the product; (2) identification of the manufacturer or private labelers; (3) a description of the harm; (4) contact information for the person submitting the report; and (5) a verification by the person submitting the information that the information "is true and accurate to the best of the person's knowledge, and that Contact information of individuals submitting information to the database is confidential and will only be shared with the manufacturer if the individual submitting the report provides his or her consent. Within five days of receiving a report, the CPSC must, to the extent practicable, transmit it to the manufacturer. The manufacturer then has an opportunity to submit comments to the Commission that state the company's position and request that its comments appear in the database alongside the report. The manufacturer also has the opportunity to identify any confidential information that appears in the report and request that the Commission redact such material before it appears online. The CPSIA provides, however, that the CPSC must post the report online within ten days of providing it to the manufacturer. The database, tentatively to be located at "SaferProducts.gov," is to go live no later than March 11, 2011 in accordance with the 18-month deadline set in the CPSIA.

CPSC should implement safeguards for promptly identifying and limiting the posting of false inaccurate information and for promptly removing inaccurate information to avoid release to the

public of inaccurate, false, misleading or unfair information. If on panels we wish to address and discuss the following issues:

**1. CPSC should allow industry typing of information that can be incorporated into the Consumer Portal of the SaferProducts.gov.**

The CPSC's Report to Congress includes a mock-up of a possible layout for the web page comprising the consumer portal tool designed to facilitate consumer input of incident data, which was included in Appendix A of the Report to Congress. The mock up, as currently contemplated, includes a drop down box from which a consumer can chose a type of product, a manufacturer, and, then a "Product Model". The mock up also includes a text box in which a consumer is permitted to supply a "Description of Product" in free text. It may be difficult to obtain a meaningful identification of a consumer product with these limited choices and descriptions. If the database permits a greater degree of specificity of product identification this will enhance the ability of the CPSC and manufacturers to spot trends and patterns in the consumer incident reports it receives. Such specificity is extremely helpful and is, in our opinion, essential to CPSC staff in distinguishing real from perceived hazards.

The CPSC has not indicated whether or how it intends to collect information from manufacturers to supply "product models" to populate the "drop down" menus from which consumers must choose, in order to identify their product. Many companies produce literally thousands of different individual products, which can change from year to year. CPSC should make the entry of data clear and easy to follow. Every effort should be made to encourage factually accurate details in the report.

Industry should be encouraged to provide information to the CSPC to assist the CPSC to develop means to ascertain product identification for individual product categories. The level of detail and form of product identification will vary by industry and manufacturer, which may require representatives of all consumer product industries to provide feedback to the CPSC and information they will need from consumers to assure accurate product identification. The ability to tailor the specificity of product identification to individual industries and manufacturers will make the database information more useful and meaningful. *[Cite to Toy Industry Examples]*

**2. Consumers should be encouraged to provide contact information to the manufacturers.**

The CPSC should encourage consumers to disclose their identities to the product manufacturers in the interest of enhancing product safety. Manufacturers will often need to obtain further information directly from the consumer to more fully understand a reported safety incident or a potential safety issue. Manufacturers who are unable to speak directly to the person who has information concerning a possible safety incident will be hampered in their ability to completely understand and quickly respond to a potential safety issue.

The CPSIA requires that a report include, at minimum: (1) a description of the product; (2) identification of the manufacturer or private labelers; (3) a description of the harm; (4) contact information for the person submitting the report; and (5) a verification by the person submitting the information that the information "is true and accurate to the best of the person's knowledge". Contact information of individuals submitting information to the database is confidential and will only be shared with the manufacturer if the individual submitting the report provides his or her

express written consent. Within five days of receiving a report, the CPSC must, to the extent practicable, transmit it to the manufacturer. The manufacturer then has an opportunity to submit comments to the Commission that state the company's position and request that its comments appear in the database alongside the report. The manufacturer also has the opportunity to identify any confidential information that appears in the report and request that the Commission redact such material before it appears online. The CPSIA provides, however, that the CPSC must post the report online within ten days of providing it to the manufacturer underlying "proof" in potential litigation.

Manufacturers will be given 10 days to provide any comments or to challenge the accuracy of a consumer report of a safety incident involving one of its products. The difficulty of evaluating and assessing the accuracy or import of such consumer reports within 10 days will be magnified exponentially if the consumer withholds his or her contact information from the manufacturer. If consumers are advised at the time they are submitting a report to SaferProducts.gov words to the effect that, "Manufacturers sometimes find it helpful to speak directly with consumers to investigate safety issues and obtain information regarding reported incidents involving their products," this may assist manufacturers to more fully understand the issues that are being reported, and to increase product safety overall. Information sufficient to enable the manufacturer to thoroughly investigate the product and issue reported is desirable. *[Cite to examples at other Agencies]*

**3. The CPSC should develop guidelines for the acceptance and re- publication descriptive material assuring both products and Manufacturers are accurately identified prior to posting**

The CPSIA does not require that the CPSC permit a consumer to add photographs or other files when they are submitting reports of incidents to be included in the publicly searchable database. It is essential that misleading, false or inaccurate information be culled from posted reports. Misidentification of product either intentionally or inadvertently must be avoided so as not to unfairly harm the reputation of the product, manufacturer, distributor or retailer of the product involved. Guidelines as a pre-condition to posting in order to avoid dissemination of false or misleading information should be developed. [Examples will be discussed].

**4. Guidelines should be developed to ensure that reports submitted for inclusion in the database are limited to actual "reports of harm" as required by the CPSIA rather than general expression of consumer dissatisfaction with a product.**

The CPSIA requires that the database shall include "reports of harm relating to the use of consumer products." The CPSIA defines "harm" as "injury, illness or death" or "risk of injury, illness or death, as determined by the Commission.

The Report to Congress does not address what procedures, if any, will be followed to separate reports that appear to describe only consumer dissatisfaction with a product from the "reports of harm" that Congress contemplated would be included in the database. Due to an inherent problem in assuring accuracy of reported data over lengthy periods of time consideration should be given to limiting reporting of "old" or stale" data not contemporaneously related to the occurrence of the incident alleged. Users should not be able to report an incident after a year has passed from the alleged incident since data over time becomes inherently suspect. Recording this information in a systematic manner will also permit the CPSC and manufacturers to quickly

identify and to provide more immediate focus on database entries in which serious harm or actual risk of serious harm has been reported. [Examples will be discussed]

**5. Guidelines should be developed for fair procedures to be followed where information reported may be inaccurate**

The CPSIA requires that if the Commission determines that the information in a report or comment is materially inaccurate, the Commission shall either decline to add the materially inaccurate information to the database, correct the materially inaccurate information in the report or add information to correct the inaccurate information in the database. The Report to Congress states that, "CPSC will expand its current efforts to verify the accuracy of incident reports, both by using technology and by continuing to investigate the most serious incidents." The CPSC is to be lauded on this goal. Section 212(c)(4) provides that if the Commission determines information in a report (or comment) is inaccurate, it can decline to add the information to the database, correct the materially inaccurate information, or add information to correct the inaccurate information. Section 213(c) (3) explicitly provides a means for a manufacturer to designate information as such. Such a designation triggers the need for a Commission determination as to whether the information qualifies as confidential before posting the report online. . Section 212(c) (4) provides that the CPSC must remove or correct inaccurate reports within seven days after it determines the information is inaccurate. If the report contains confidential material, then the Commission may not include the report in the public database until it has redacted the confidential information.

Given the CPSC's resource limitations, however, and its understandable inability to have the depths of product-specific knowledge that the manufacturer would have, it would be expected that potential inaccuracies in reported incidents would more likely be detected, first, by the manufacturer. There is a danger that inaccurate information regarding a consumer product can irreversibly damage the reputation of a company and the sales of its product. In addition, inaccurate reports provide a disservice to consumers, who may become concerned about a product they have purchased that actually poses no danger or who are misled in their purchasing decisions by such inaccurate reports. While the CPSIA provides that the website must have a "clear and conspicuous" notice that the CPSC "does not guarantee the accuracy, completeness, or adequacy of the contents of the database," the information will, nevertheless, appear on the website of a federal agency in an official "product safety incident database" and, regardless of any fine-print disclaimer, is likely to be considered and relied upon by many in the public as absolutely valid.

The TIA recommends that procedures be adopted to permit there to be an extension of the 10 day period of time for publication of reports in the database under circumstances where there has been a challenge to the accuracy of a report. In addition we recommend that CPSC establish a process to address how it will identify and correct inaccurate information *prior to* posting online. *[Ways in which this may be achieved will be discussed]*

**6. Legal/Evidentiary issues of admissibility should be addressed in advance.**

The CPSIA Section 212(a) (b) (5) states that, "The Commission shall provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness or adequacy of the contents of the database." The consumer product

incident reports that comprise the SaferProducts.gov database, themselves, will be anonymous hearsay.

The reports from consumers do not fit within the “public records” exception to evidentiary rules prohibiting the admission of hearsay evidence. The Federal Rules of Civil Procedure 803(8), for example, permit public records to be admissible as exceptions to the hearsay rule only if the records reflect “activities of the office or agencies”, “matters observed pursuant to duty imposed by law as to which matters there was a duty to report,” and “factual findings resulting from an investigation made pursuant to authority granted by law.”

To ensure that it is clear that the reports contained in the database may not be elevated to a status beyond what the reports actually are, through an attempt to characterize them as “public records” or otherwise exempt from existing prohibitions against the admission of hearsay evidence, CPSC should clearly disclaim data admissible for any other purposes.

**7. CPSC should continue to re-affirm that information submitted to the CPSC under Section 15(b) or any other mandatory or voluntary reporting program will not be included in the SaferProducts.gov database and will still be subject to the protection and requirements of Section 6(a) and (b) of the CPSA.**

It is clear under CPSIA Section 212(f)(2) that the requirements for establishment of the database do not remove the protections and requirements of Section 6(a) and (b) of the CPSA for information submitted to the CPSC under Section 15(b) or any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler. However, based upon public hearings to date, there remains concern among stakeholders that this information will be included in the database. The Report to Congress does not address this issue, so CPSC should continue to confirm in notices posted on the database and database portals that the requirements of Section 6(a) and (b) of the CPSA apply to information received by the Commission under Section 15(b) of the CPSA and any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler and the Commission.

Should you have any questions or need clarification on the above comments, please do not hesitate to contact me at [edesmond@toyassociation.org](mailto:edesmond@toyassociation.org) or at 202-857-9608.

Sincerely,



Edward Desmond  
Executive Vice President, External Affairs



# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0003

Comment from Erin Hoffrance

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## Submitter Information

**Name:** Erin Hoffrance

**Address:**

WA, 98026

**Submitter's Representative:** Unknown

**Organization:** None

**Government Agency Type:** Regional

**Government Agency:** None

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## General Comment

I fully support the establishment of a database of recalls by the Consumer Product Safety Commission. As a new parent I shocked by the number of recalls that happen and am glad to be on the email list for receiving updates. It would also be great to have the capability to search for such recalls because not everything we receive is new and it would be nice to look up products that are handed down or are not very recent recalls. At the workshop, via the webcast, I heard the dicussion on model numbers and I know that they are sometimes difficult to find and anything that could be instituted that makes searching successful even if the model number is incomplete would be a great help. For instance, if you know many of the other fields maybe an autofill feature or something along those lines where if you do not have the model number it does not prevent you from searching or submitting a recall.

# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0004

Comments from Consumers Union

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## Submitter Information

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**Address:** United States,

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0004.1:** Comments from Consumers Union

# **Consumers Union**

**Nonprofit Publisher  
of Consumer Reports**

Comments of

Ami V. Gadhia

Policy Counsel

Consumers Union

Before the U.S. Consumer Product Safety Commission

Establishment of a Public Consumer Product Safety Incident Database

January 11 and 12, 2010

Consumers Union of United States, Inc., publisher of Consumer Reports®, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports®, its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

## I. Introduction

Consumers Union (CU), the non-profit publisher of *Consumer Reports*<sup>®</sup> magazine, appreciates the opportunity to offer comments as the Consumer Product Safety Commission (CPSC) develops its public product safety complaint database, as directed by the Consumer Product Safety Improvement Act of 2008 (CPSIA)<sup>1</sup>. This database will help consumers avoid injury – or even worse, death – from products under the Commission’s jurisdiction. It will also be a vital tool for the Commission, as it can help focus the CPSC’s public education campaigns and adjust the agency’s priorities to deal with emerging or widespread hazards.

Prior to addressing some of the Commission’s posed questions regarding the database, we would like to note several critical contextual points for the CPSC to keep in mind. As the CPSIA was moving through Congress, consumer groups highlighted the secrecy around product hazards created by Section 6(b) of the Consumer Product Safety Act (CPSA). This section, unprecedented among safety agencies, requires the CPSC to obtain prior approval from manufacturers before they release any information about their products to the public. While technically the CPSC can overrule the company’s veto of the release of data, in reality, the threat of a lawsuit against the agency has always been enough to stop the CPSC from releasing information. That, coupled with the CPSC’s need to work incredibly hard to convince companies to undertake some recalls, leads to long delays between when the CPSC knows a product may be deadly and when they alert consumers to that danger, if ever.<sup>2</sup>

During the drafting and debate over the CPSIA last year, when it became clear that industry would block any attempt to remove the severe restrictions under Section 6(b) of the CPSA, the idea to include instead a consumer database – collecting in one place all the hazard and safety reports that come to the Commission from sources other than a report from a manufacturer or private labeler – began to take shape. This public database would provide government, consumers, advocates, business and the media with information on product hazards.<sup>3</sup>

Consumers therefore operate under a veil of ignorance -- lacking vital safety information that manufacturers and the CPSC may have. While 6(b) still remains as part of the CPSA, there remains an imbalance of who knows what product safety information when. Consumers who purchase and use a product too often are the last to know about critical product safety information, unless they are the unlucky ones who first discover the product’s flaw.<sup>4</sup>

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<sup>1</sup> Federal Register / Vol. 74, No. 244 / Tuesday, December 22, 2009, “Establishment of a Public Consumer Product Safety Incident Database: Notice of Public Workshop.”

<sup>2</sup> See Statement of Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America, Before the U.S. Consumer Product Safety Commission Establishment of a Public Consumer Product Safety Incident Database, November 10, 2009. Testimony offered on behalf of Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, the Scientific Integrity Program of the Union of Concerned Scientists and U.S. Public Interest Research Group.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

The public database, created by section 212 of the CPSIA, will serve to lift that veil and allow consumers to make better-informed decisions – providing them with access to information on safety as well as a mechanism to share information that they discover. The public database will go a long way towards increasing transparency at the CPSC and ensuring that consumers will have prompt access to important information on known product hazards. Such information should not be kept secret from the public.<sup>5</sup>

Two stories illustrate the problems with secrecy of product hazard information and the need for this public database. The first is that of a grout sealing product called “Stand ‘n’ Seal.” Stand ‘n’ Seal is a spray-on waterproofing sealant for tile grout. According to an October 8, 2007 article in the *New York Times*, after a new ingredient was added to Stand ‘n’ Seal in the spring of 2005, “calls from customers, emergency rooms and doctors started to pour into poison control centers and, initially in smaller numbers, to the Consumer Product Safety Commission’s own hot line.”<sup>6</sup> One child, stopping to talk to his father who was using the sealer, suffered damage to 80 percent of the surface area of his lungs.<sup>7</sup>

With complaints mounting, the manufacturer’s chief executive reportedly told staff answering the company’s consumer hotline not to tell customers that others had reported similar complaints because doing so “may cause unnecessary public concern.”<sup>8</sup> “Nearly three months passed between the time [the manufacturer] first received a report of an illness and the official recall by the Consumer Product Safety Commission, a period during which dozens were sickened.”<sup>9</sup> The CPSC officially recalled the product on August 31, 2005. In the press release, the CPSC acknowledged, “88 reports from consumers who have had adverse reactions after using the aerosol product, including 28 confirmed reports of overexposure resulting in respiratory symptoms for which medical attention was sought for coughing, irritation, difficulty breathing, dizziness and disorientation. Thirteen individuals required medical treatment, including overnight hospitalization.”<sup>10</sup>

A second story demonstrating the need for a public safety database for consumers is that of Abigail Hartung. In September 2007, Abigail’s father Andrew found her crying with her fingers trapped in a space between the top rails of her crib, manufactured by Bassettbaby and part of a

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<sup>5</sup> *Ibid.*

<sup>6</sup> Lipton, Eric, “Dangerous Sealer Stayed on Shelves After Recall,” *New York Times*, October 8, 2007. *See also* Statement of Rachel Weintraub, Director of Product Safety and Senior Counsel, Consumer Federation of America, Before the U.S. Consumer Product Safety Commission Establishment of a Public Consumer Product Safety Incident Database, November 10, 2009. Testimony offered on behalf of Consumer Federation of America, Consumers Union, Kids in Danger, Public Citizen, the Scientific Integrity Program of the Union of Concerned Scientists and U.S. Public Interest Research Group.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> CPSC Press Release, “CPSC, Tile Perfect Inc. Announce Recall of Stand ‘n’ Seal Grout Sealer Due to Respiratory Problems,” August 10, 2005, available online at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05253.html>.

Wendy Bellissimo Collection line sold exclusively at Babies 'R' Us. The bolts at the corners of the crib had come loose, creating the gap. Upon closer inspection, Andrew discovered that the bolt holes had been drilled too closely to the edge, causing the wood to split.

Fearful that other children would become entrapped in similar cribs, Andrew called the company that distributed them, Bassettbaby, a unit of the well-known furniture maker Bassett. He said that a Bassettbaby vice president told him that his was the only complaint the company had received about the crib and that the company would not take any action to notify other consumers who might have bought one.

Suspecting the company was not telling him the truth, Andrew contacted the CPSC. According to the CPSC, Bassettbaby had already received 85 reports of bolts loosening on the cribs, including one report of a 13-month-old child's hand becoming trapped between the railings.

Andrew did not stop there. He contacted children's-product designer Wendy Bellissimo's company. A few days later, Andrew said, Bellissimo's husband called back and said they had not heard anything about any problems with the cribs and that they were "horrificed" by what he had told them.

A few weeks after the Hartung incident, a CPSC investigator came to their house and took away the faulty crib. And a month later the CPSC announced a recall of 8,900 of the cribs and cautioned parents to stop using them.

Bassettbaby has since issued two other recalls of Wendy Bellissimo cribs. All of the recalled cribs were manufactured in China and sold exclusively at Babies 'R' Us. In February 2008, 18 cribs were recalled because spindles on the drop-side of the crib could loosen creating a gap that poses an entrapment and strangulation hazard. In June 2008, 550 more cribs were recalled because the space between the spindles on some failed to meet federal standards and could pose an entrapment hazard.

Situations exactly like the Hartungs' are precisely what this database is meant to prevent. The company – and the CPSC – were aware of numerous safety incidents with this crib. However, there was no mechanism in place for consumers to know about the experiences that others had had with this crib before deciding to purchase it. The CPSC investigative and recall process, understandably, takes a long time. In the meantime, consumers cannot know whether safety concerns have sprung up with a particular product. If the product is never recalled, the safety problems, such as the 85 reports in the Hartungs' case, never see the light of day and remain within the CPSC files. The public database will provide just such a mechanism, so that consumers can research a product's track record before deciding to purchase it. These kinds of aggregate consumer safety experiences – *especially* when it comes to products like cribs, strollers, play yards, and other products in which parents place their children – can only be collected and made useful to consumers through a robust public product safety incident database. Consumers will not have to rely on their own bad experiences, or the chance that a product will be recalled after a lengthy investigative process, to know not to buy it.

The Hartungs' story also demonstrates the utility of such a database for the CPSC. As consumers, health care professionals, child service providers, and public safety entities learn about the database and submit reports of product safety incidents to it, the database will contain a larger

well of information; trends in products hazards will become clear to the Commission, and the agency will be able to identify products and categories of products upon which it should focus its investigative efforts. The end result of this database should be a safer marketplace, more informed consumers, and a more efficient CPSC.

## **II. Workshop Questions**

Below are several points that CU would like the CPSC to take into account as it moves forward on creating the public database. These points are in response to some of the questions posed by the CPSC in its announcement of these workshops.

### **DATA CAPTURE/INTEGRITY**

\* The more the database is utilized by consumers, health care professionals, child care providers, public safety entities, the more useful the database will be to these groups and to the Commission. In order to maximize reporting by those affected, the CPSC will have to undertake a significant public education/awareness campaign. We recommend that the Commission partner with state and local governments, consumer advocacy groups, health care provider associations, parents' groups, the media, and others to spread the word about this database and about how the aforementioned groups can make a report.

\* The information that the Commission is required to include in the database under Section 212(a) of the CPSIA<sup>11</sup> is appropriate. At this time, CU does not suggest that the Commission gather additional categories of information, but rather that the Commission focus on ensuring the quality and timely public reporting of the information gathered under the categories listed in the statute.

\* Pursuant to the CPSIA, the only information that cannot be included in the public database is "the name, address, or other contact information of any individual or entity that submits to the Commission a report described in paragraph, (1)(A), except that the Commission may provide such information to the manufacturer or private labeler of the product with the express written consent of the person submitting the information. Consumer information provided to a manufacturer or private labeler under this section may not be used or disseminated to any other party for any purpose other

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<sup>11</sup> "SEC. 6A. PUBLICLY AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE. ... (b) CONTENT AND ORGANIZATION.—

"(1) CONTENTS.—Except as provided in subsection (c)(4), the database shall include the following:

"(A) Reports of harm relating to the use of consumer products, and other products or substances regulated by the Commission, that are received by the Commission from—

"(i) consumers;

"(ii) local, State, or Federal government agencies;

"(iii) health care professionals;

"(iv) child service providers; and

"(v) public safety entities.

"(B) Information derived by the Commission from notice under section 15(c) or any notice to the public relating to a voluntary corrective action taken by a manufacturer, in consultation with the Commission, of which action the Commission has notified the public.

"(C) The comments received by the Commission under subsection (c)(2)(A) to the extent requested under subsection (c)(2)(B)."

than verifying a report submitted under paragraph (1)(A).”<sup>12</sup> This language makes clear that the personal contact information of, e.g., consumers making a report to the database is not to be made public. In addition to individual privacy concerns, a reason for this prohibition is to prevent the harassment or intimidation of consumers or other reporters by regulated companies, and to remove the fear that plaintiffs’ attorneys will somehow search for clients from this database.

In addition, if the Commission – prior to the posting of reported product safety incident data (within 10 business days of submission of the report to the manufacturer or private labeler) – determines that the information in the report is *materially inaccurate*, it can decline to post the information, or it can post the information after it is corrected, or add information to the posting to correct the material inaccuracy. Other than these restrictions, information can – and should – be publicized for the protection of consumers.

\* The CPSIA is clear that the provisions of Section 6(b) are not relevant to the database. Specifically, Section 212(a) of the CPSIA (which itself modifies the CPSA) states, “The provisions of section 6(a) and (b) [of the CPSA] shall not apply to the disclosure under this section of a report described in subsection (b)(1)(A) of this section. “(2) CONSTRUCTION.—Paragraph (1) shall not be construed to exempt from the requirements of section 6(a) and (b) information received by the Commission under—

“(A) section 15(b); or “(B) any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission.”

This language is crystal clear that the Commission is not to permit the secrecy provisions of Section 6(b) of the CPSA to become a burial ground for consumer reports of harm that are fully intended to be made public under the CPSIA. We urge the Commission to remain vigilant against attempt to conflate Section 6(b)’s secrecy provisions with the directives of the public database.

\* In order to help ensure the accuracy and ongoing integrity of submitted data, the CPSC can and should use software “filters” that sort out redundancies and multiple submissions from the same source, and that can group multiple, discrete reports for the same problems.

\* Some suggestions as to how the incident report form can be designed so that it is clear and easy for users to complete are as follows: large, easy-to-read font and language on each page of the database; a “step by step” system that asks users to complete one grouping of tasks (i.e., name and contact information for Commission use, product information, then specific space for comments to describe complaint) per each page; examples of the type of information that Commission is seeking for each field; and a clear explanation of both the privacy protections on submitted information and the necessity and utility to the Commission of these reports.

\* While we believe that the database should contain accurate information, we urge the Commission to ensure that the desire to verify the accuracy of all parts of a report not result in delays in publication of the report. In order to serve consumers and child care providers seeking to make a purchase, whatever information that is accurate should go up on the public database while additional information is verified for accuracy (if necessary).

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<sup>12</sup> Consumer Product Safety Improvement Act, Public Law 110-134, Section 212(a).



\* The incident report form should only contain links to outside websites if doing so will enhance the accuracy of the report. Otherwise, we are concerned that these links could confuse reporters or unnecessarily complicate the reporting process. We also urge caution when linking to any websites other than other federal, state, or local government websites (i.e., private enterprise websites of any kind).

\* Regarding disclaimers/qualifications on the incident report form, we recommend a disclaimer notifying people who file a report about the limited circumstances under which their name, address, or other contact information could be shared with manufacturers and private labelers, and that they have the right to decline consent for such sharing of their information without affecting the ability of their report to be published. (See Section 212(a) of the CPSIA: “The Commission may not disclose, under this section, the name, address, or other contact information of any individual or entity that submits to the Commission a report described in paragraph (1)(A), except that the Commission may provide such information to the manufacturer or private labeler of the product with the **express written consent** of the person submitting the information. Consumer information provided to a manufacturer or private labeler under this section **may not be used or disseminated to any other party for any purpose other than verifying a report submitted under paragraph (1)(A).**”) (emphasis added).

\* All forms of reporting – telephone and paper, as well as electronic submission via database – should be encouraged in order to ensure that there is not a “digital divide” in reporting. That is, reporting should be as easy for those without access to computers and Internet service as it is for those with these tools.

\* Description of the consumer product: Asking consumers/other reporters for the brand, model name, and model number of the product involved is sufficient. Requesting this information will help ensure that the correct manufacturer and/or private labeler are identified in a report of harm. In addition to this information, the database should ask those submitting a complaint to provide information about the nature of the individual’s injury, if any, age of the injured individual, and the final disposition of the injury (e.g., hospitalization, other medical treatment, etc.).

By way of comparison, below is what the National Highway Traffic Safety Administration (NHTSA) asks consumers to fill out regarding reports of safety incidents with car seats:

#### **Child Restraints**

- Make
- Model Number
- Type (only appears with some makes)
- Date of Manufacture
- Component\*

\* *Component -- Part or system of concern*

See (<http://www-odi.nhtsa.dot.gov/ivoq/index.cfm>)

\* We suggest those making a report be asked to provide their phone number and e-mail address (if available) so that the CPSC may contact them to follow up on the report or to conduct an investigation.

\* We offer as an example the privacy practices of the Safety Complaint database maintained by NHTSA: they may share consumer's information with the vehicle manufacturer during an **investigation or recall** in accordance with their privacy notice, 49 FR 53971; Sept 3, 2004) (emphasis added). The consumer's name, address, and phone number are transmitted to the agency via their secure website. See <http://www-odi.nhtsa.dot.gov/ivoq/index.cfm>.

The bottom of the NHTSA database website (<http://www-odi.nhtsa.dot.gov/ivoq/index.cfm>) also contains the following privacy notice: "The Privacy Act of 1974 - Public Law 93-579, As Amended: *This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response maybe used to assist the NHTSA in determining whether a manufacturer should take appropriate action to correct a safety defect. If the NHTSA proceeds with administration enforcement or litigation against a manufacturer, your response, or statistical summary thereof, may be used in support of the agency's action.*"

#### **DATA ACCESS BY PUBLIC**

\* Database reports should, as required by the statute, be available in to the public from the Commission's website in a searchable format. Specifically, the database should be searchable both by general word entry, similar to the type of search functions of Google, Bing, Yahoo, and other similar engines. Second, the data should be searchable by type or category of product: crib, stroller, toaster, ceiling fan, bath fixtures, kitchen appliances, etc. Third, the data should be searchable by brand name, model name, and model number. All search results should be sortable by alphabet, date, and relevance.

\* As required by the CPSIA, information from reports of harm and mandatory and voluntary recall notices should be made available for public search and reporting. The inclusion of all of this information in the public database will help to establish the relative seriousness of the various hazards reported, and can help focus the Commission's public education campaigns and focus the Commission's priorities on the issues of greatest danger to public health and safety.

#### **USES OF DATA**

\* Third party analysis of the raw data contained in the website can be extremely helpful to the Commission in bringing emerging safety problems to light. A prime example of the utility of third party analysis of the raw data is the Bridgestone/Firestone tire failure. An independent researcher was able to download, sort, and analyze the raw data submitted to the NHTSA database by consumers, and was able to bring to NHTSA's attention that there was a tread separation problem with these particular tires. In that case, third-party analysis of the raw data was so critical because some consumers were reporting the problem as being one related to the Bridgestone/Firestone **tires**, whereas other consumers were reporting the problem as being related to Ford Explorer vehicles, on which the tires were placed and sold. Independent researcher study of these complaints identified the widespread nature of the problem, and helped to bring about an enormous safety recall. If raw data is available in this manner, third parties – including organizations like CU – can assist the Commission in fulfilling its mission of protecting the public.

**Stevenson, Todd**

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**From:** Gadhia, Ami [GadhAm@consumer.org]  
**Sent:** Monday, January 04, 2010 3:34 PM  
**To:** CPSC-OS  
**Cc:** Mays, Don; Duncan, Janell; Bloom, Ellen; Gadhia, Ami  
**Subject:** Consumers Union comments for CPSC Database Workshops, Jan 11 and 12  
**Attachments:** CPSC Public Database Workshops Jan 2010.pdf

Dear Sir/Madam:

Please find attached Consumers Union's comments for next week's workshops on "Establishment of a Public Consumer Product Safety Incident Database."

Thank you,

Ami Gadhia

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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0005

Comments from Consumer Federation of America

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## Submitter Information

**Name:** Rachel Weintraub

**Address:** United States,

**Organization:** Consumer Federation of America

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0005.1:** Comments from Consumer Federation of America



**Consumer Federation of America**

**Statement of**

**Rachel Weintraub**

**Director of Product Safety and Senior Counsel**

**Consumer Federation of America**

**Before the**

**U.S. Consumer Product Safety Commission**

**Establishment of a Public Consumer Product Safety Incident Database**

**January 2010**

## **I. Introduction**

Thank you for holding this public meeting and for providing me with an opportunity to speak before you today. My name is Rachel Weintraub. I am the Director of Product Safety and Senior Counsel with Consumer Federation of America (CFA). Consumer Federation of America is a non-profit association of more than 280 pro-consumer groups, with a combined membership of 50 million people that was founded in 1968 to advance the consumer interest through advocacy and education.

The U.S. Consumer Product Safety Commission, before passage of the CPSIA, did not provide consumers with adequate information about important safety-related problems regarding products they may own or may be considering purchasing. While CPSC's web site provides recall information, it does not include consumer complaints or other information about specific products that is geared to the public.

Current law requires manufacturers to report product safety problems to CPSC and the Commission has a hotline to which consumers can report information about products, but such information rarely gets disclosed to the public, and if it is disclosed, is not disclosed promptly. Further, once CPSC has information about a safety problem – including problems identified from consumer complaints – the Commission is required by law to inform manufacturers if it intends to disclose such information to the public. Unfortunately, because the process between CPSC and manufacturers can sometimes take years, the information may languish with CPSC before it is finally disclosed. If the product is not recalled, consumer complaints about it may never be disclosed, and important safety information may be withheld from the public.

One reason why consumers do not have access to key information about consumer products is because of a provision in the Consumer Product Safety Act - Section 6(b) - that has the result of almost always withholding product safety information from consumers. In addition, lawsuit records and settlements are often sealed and manufacturers have been documented as telling customers they are the first to complain of a problem – even if they have knowledge of other similar complaints.

As the recalls and injuries in 2007 led Congress to consider product safety reform in-depth, consumer advocates often pointed to the chilling effect of Section 6(b) of the Consumer Product Safety Act. This provision, unprecedented among safety agencies, requires CPSC to obtain prior approval from manufacturers before they release any information about their products to the public. While technically CPSC can overrule the company's veto of the release of data, in reality, the threat of a lawsuit against the agency has always been enough to stop CPSC from releasing information. That, coupled with CPSC's need to work incredibly hard to convince companies to undertake some recalls, leads to long delays between when CPSC knows a product may be deadly and when they alert consumers to that danger, if ever.

Consumers therefore operate under a veil of ignorance -- missing vital safety information that manufacturers and CPSC may have. While 6(b) still remains as part of the Consumer Product Safety Act, there remains an imbalance of who knows what product safety information when. Consumers who purchase and use the product too often are the last to know about critical product safety information, unless they are the unlucky ones who first discover the product's flaw.

For example, the CPSC's knowledge of numerous, serious and well documented harms caused by Stand 'n Seal, a spray-on waterproofing sealant for tile grout is of great concern. According to an October 8, 2007 article in the *New York Times*, after a new ingredient was added to Stand 'n Seal in the spring of 2005, "calls from customers, emergency rooms and doctors started to pour into poison control centers and, initially in smaller numbers, to the Consumer Product Safety Commission's own hot line."<sup>1</sup> One child stopping to talk to his father who was using the sealer, suffered damage to 80 percent of the surface area of his lungs.<sup>2</sup> With complaints mounting, the manufacturer's chief executive told staff answering the companies' consumer hotline not to tell customers that others had reported similar complaints because doing so "may cause unnecessary public concern."<sup>3</sup> "Nearly three months passed between the time [the manufacturer] first received a report of an illness and the official recall by the Consumer Product Safety Commission, a period during which dozens were sickened."<sup>4</sup>

The CPSC officially recalled the product on August 31, 2005. In the press release, CPSC acknowledged, "88 reports from consumers who have had adverse reactions after using the aerosol product, including 28 confirmed reports of overexposure resulting in respiratory symptoms for which medical attention was sought for coughing, irritation, difficulty breathing, dizziness and disorientation. Thirteen individuals required medical treatment, including overnight hospitalization."<sup>5</sup> The Commission did not disclose critical safety information to the public and used 6(b) as a shield to maintain the secrecy of these severe health effects. However,

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<sup>1</sup> Lipton, Eric, "Dangerous Sealer Stayed on Shelves After Recall," *New York Times*, October 8, 2007.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> CPSC Press Release, "CPSC, Tile Perfect Inc. Announce Recall of Stand 'n Seal Grout Sealer Due to Respiratory Problems," August 10, 2005, available on the web at <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml05/05253.html>.



even after the official recall, the hazardous product remained on the shelves; the replaced product contained the same hazardous chemicals and many people were severely injured.

The public database, created by section 212 of the CPSIA, will serve to lift that veil and allow consumers to make informed decisions – providing them with access to information on safety as well as a mechanism to share information that they discover.

The public database will go a long way towards increasing transparency at CPSC and ensuring that consumers will have prompt access to important information on known product hazards. Such information should not be kept secret from the public.

Implementation of an effective database also will help dispel a culture of secrecy that for too long has harmed the larger work of the agency, discouraging the free exchange of information among CPSC scientists and technical staff, and the release of CPSC research to the public.

The CPSC's Injury Information Clearinghouse aggregates data (e.g. injuries and deaths) about product hazards and incidents received from numerous sources. The Clearinghouse is also charged with disseminating such statistics and information to the public. However, if a consumer wants to learn valuable information from the database about the safety record of a particular crib or stroller before purchasing it for a baby, she or he would not be able to obtain it, or any other product-specific information (e.g., the product's brand name).

During the drafting and debate over the CPSIA last year, when it became clear that industry would block any attempt to remove the gag order that is section 6(b) of the Consumer Product Safety Act, the idea to include instead a consumer database – collecting in one place all

the hazard and safety reports that come to the Commission from sources other than a report from a manufacturer or private labeler – began to take shape. This public database would provide government, consumers, advocates, business and the media with information on product hazards.

## **II. Section 212 of the CPSIA**

The CPSIA is clear about what is required in the “Publicly Available Consumer Product Safety Information Database.” Section 212 of the CPSIA amends section 6 of the CPSA. The provision states that subject to appropriations, the Commission shall “establish and maintain a database on the safety of consumer products, and other products or substances” regulated by the Commission. The provision further clarifies that the database must be publicly available, searchable, and accessible through the CPSC website. This requires CPSC to develop a user friendly format that will encourage submissions and inquiries.

Section 212 states that the contents of the database will include, “reports of harm relating to the use of consumer products . . . that are received by the Commission from consumers; local, state, or federal government agencies; health care professionals; child service providers; and public safety entities” as well as reports under Section 15(c) of the CPSA and comments received from manufacturers or private labelers in response to the reports. Section 15(c) includes actions CPSC takes based on product hazards reported to them by companies.

Section 212 also specifies what type of information should be collected for inclusion in the database, specifically: a description of the product; identification of the manufacturer or private labeler; a description of the harm related to the use of the product; contact information for the reporter, including a verification of the information and anything else CPSC deems in the public interest.

The statute also clarifies how the dataset should be organized. The database should be searchable by date of report, the name of the product as well as model and other names given by the manufacturer and anything else CPSC deems in the public interest. In addition, the database cannot disclose the name of or contact information for an individual consumer using the database, in order to protect consumer privacy.

### **III. Suggestions for Interpretation of Section 212**

Since the statute gives CPSC discretion to implement provisions of the Database consistent with what the Commission deems is in the “public interest,” we offer the following suggestions for interpreting content and features that are in the “public interest” which should provide assistance to CPSC as the agency develops the database:

- CPSC should make the entry form or phone script for those reporting to the database clear and easy to follow. Every effort should be made to encourage as many details as possible in the report.
- Lack of any specific information, such as a model number, should not stop the process or prevent a report from inclusion in the database. The manufacturer name might be different from the name on the product – with many licensing agreements, especially in children’s products, consumers will have to be detectives in some cases to find the correct manufacturer name, along with the brand name it is sold under. The form and/or phone script should give detailed instructions on possible places to look for this sometimes hidden information.
- Once detailed information is collected, CPSC has five business days to report to the manufacturer to give them the ability to refute or correct information in the report. The

law requires CPSC to post the information within 10 days of reporting it to the manufacturer; it is imperative that this timeline be met for the database to be effective.

- After entry, the information must be organized in such a way that consumers and others can find answers easily. CPSC must build in functionality to allow for searches based upon specific products, all of the various product names (including common misspellings), types of injury, and uses of products.
- CPSC should also link to other relevant information within the database, including staff research. If the product that is subject to the entry has been recalled, CPSC should note that and link to the recall notice. If it is recalled as a result of the complaint or at a later date, that information should also be added. Consumers should have access to both the report of the hazard and the recall information at the same time.

Public access to information is vital to safety. Simply allowing consumers access to the safety record of products will increase safety and encourage the speedy removal or redesign of unsafe products. Allowing consumers to report problems they encounter with products will also help the Commission to do its job of protecting the public from unsafe products.

We also hope that CPSC will use this information to analyze this valuable data and mine it for trends and emerging problems.

#### **IV. Comments Regarding CPSC's report to Congress on the Database**

In September of this year, CPSC issued a report to Congress about its efforts to implement section 212 of the CPSIA.

##### **A. Strengths of the Report**

CPSC makes clear that it will meet the March 2011 deadline for implementation. We applaud this development since the earlier information will be available to consumers, the more informed consumers will be about making decisions about product safety. Second, CPSC outlines an extensive public outreach campaign to encourage use of the database and other CPSC resources.

We agree that the strength of the database is contingent upon the data that is included within it. Ensuring that consumers and others know about the database, both as a place to report as well as to access data, is a critical to the effectiveness and utility of the information included in the database. We also applaud the priority that CPSC places upon improving its ability to identify risks and respond quickly, particularly that the database is intended to “enhance the quality, value and accuracy” of the data collected. We support the work of the Commission to eliminate the information “silos” that have existed for years at the Commission. The plans to integrate the database with other CPSC programs and information is vital to assisting CPSC with their work to reduce product hazards as well as enable consumers to have access to all sources of information from one portal.

#### **B. Suggestion for Improvement**

Much of the focus of the report seems to be upon individual consumers reporting their experiences with products and then using the database to research purchases. However, the needs of all users should be integrated into the planning, evaluation, outreach and use of the database. The users, as articulated in part by the statute, will include consumers, industry, consumer organizations, health care providers, child care providers, reporters, researchers and others.

In addition, we urge CPSC to address how it will integrate pre-database incident data into the new system. It is vital to include incident data that pre-dates the database into the new repository in order to ensure that the database is robust, and any analyses of new data can adequately assess risks posed by all data collected by the agency, not just that data collected after the database is up and running.

Further, we recommend that a timely and transparent appeals process be created so that when CPSC redacts, corrects, or removes data, the complainant can show why such information should be included. Industry may use a broad brush when making determinations about what information should not be made public because they claim it is a “trade secret.” In order to prevent abuses of “trade secret” protections, and to ensure that the database serves its purpose and the statutory directive, clear guidelines should be used and noted when decisions are made to include, amend or exclude specific information.

## **V. Criticisms of the Database**

Some industry representatives have expressed concerns that competitors will use the CPSC database to their advantage to discredit other companies. The CPSIA database provision addresses this issue by allowing companies to refute complaints on the database, and requires the CPSC to remove or correct any false information. Concerns have also been raised that such a database would result in attorneys “shopping” for personal injury clients. The provision addresses this issue by prohibiting CPSC from disclosing the names and addresses of consumers on the database – therefore, identifying a particular consumer would not be possible.

## **VI. Conclusion**

We strongly support the existence of the database that will create a mechanism where consumers and others can report and obtain critical safety information about the products they use every day. We are encouraged by the Commission's work on the database thus far, and look forward to working with the Commission as the database is implemented.

This database will help CPSC to do its job more effectively. The public posting of consumer, health care professional and public safety officials' information about the known hazards posed by specific consumer products means that CPSC will be able to better identify emerging problems with dangerous products and take steps to remove such products from the marketplace and protect consumers more quickly. This database will help save lives.

**Stevenson, Todd**

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**From:** Rachel Weintraub [rweintraub@consumerfed.org]  
**Sent:** Monday, January 04, 2010 5:18 PM  
**To:** CPSC-OS  
**Subject:** statement for database meetings  
**Attachments:** Database testimony 1 10.doc

I will likely have more specific information later this week, but please accept this for the meetings next week.

Thanks,  
-rw

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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0006

Comments from Safety Research & Strategies, Inc.

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## Submitter Information

**Name:** Sean Kane

**Address:** United States,

**Organization:** Safety Research & Strategies, Inc.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0006.1:** Comments from Safety Research & Strategies, Inc.



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**Establishment of a Public Consumer Product Safety Incident Database:  
 Public Workshop, January 11 and 12, 2010**

Below are Safety Research & Strategies comments regarding the questions raised by CPSC with respect to the development of a Product Safety Incident Database (74 FR 68053, December 22, 2009).

**1. Data analysis and reporting**

- Should the CPSC design the online incident reporting form to ensure the capture of data that can be used in scientific statistical analysis? If so, how?
- What can the CPSC do, from a system design perspective, to ensure the accuracy of submitted data?
- In what formats should the CPSC make data available to the public? Please explain your reasoning.
- What types of data analysis and reporting tools are being used by third-party analysts in the public and industry? What are these tools' relative merits and drawbacks?
- What data sets, including information from reports of harm and mandatory and voluntary recall notices, should be made available for public search and reporting? Why?

Under section 6A(b)(4) of the CPSA, the data should be available "in a manner consistent with the public interest" and "in a manner to facilitate easy use by consumers."

Addressing both the public interest and the ease of use by consumers, we draw on extensive experience with the NHTSA data which we routinely use for defect surveillance, and from which we have built a commercial research tool. We are also drawing on our experience as product safety advocates frequently working with consumers and their counsel.

The backbone of a public database is the fusion of sufficient detail on the product and problem and public availability of the data in a timely fashion. The success of the database to meet the public interest goals and facilitate ease of use requires the agency to balance what is absolutely necessary for a minimal level of information to qualify as a

“complaint,” against the detailed information demands of the agency and other stakeholders. Like the NHTSA consumer complaint database, the consumer product database will add to the tools available for surveillance and for educating consumers who often have little viable information on the potential hazards associated with products they purchase.

Populating the complaints database requires multi-tiered outreach and the ability for consumers to easily and simply report product problems. Again, based on our experience, the form with which consumers interact must have an open narrative section along with discrete data fields – a minimum of which should be required for submission, including the complainant’s contact information (see below), product information, and problem type.

The data that populate the database need to be available as open format, delimited, ASCII text files that are downloadable from the agency. This serves the public interest in a number of important ways. First, the data are transparent for all interested parties and stakeholders to analyze – everyone can examine the data from a level playing field. This is particularly important as a check-and-balance and creates a win-win scenario for the agency, consumers and manufacturers because there is a greater likelihood of that product issues can be identified can be identified remedied in a timely fashion (as well as any potential problems associated with the data itself).

Second, outside review of the data will support the agency and its consumer protection mission. Consumer product safety, and particularly surveillance and countermeasures, are best served when all stakeholders have access to complaint data that is sufficiently detailed, timely and available. Our experience with NHTSA shows that independent analyses of complaint data can lead to enforcement activities and improved product monitoring and countermeasures by manufacturers while providing consumers with information on problems associated with the products they buy and depend on.

Our use and analysis of the NHTSA data has helped the agency open investigations and has led to the recalls of tens of millions of vehicles and tires involving defects ranging from engine compartment fires to substandard tires. Other Non-Governmental Organizations (NGOs) routinely provide important surveillance assistance to NHTSA using the complaint data. For example, statisticians at Quality Control Systems, Corp. have created a statistical ranking system to quantify the unusual distribution of complaints related to specific components associated with each fleet. This ranking system is not based on simple counts of complaints and is described in the peer-reviewed paper published in *Injury Prevention*.<sup>1</sup>

There are an array of tools used for analysis and review of data and because these tools continue to change, it is important to provide the data in a generic format. Further, use of the data should not require the purchase of proprietary software. Analyzing the data

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<sup>1</sup> Whitfield, R. A., and Alice K. Whitfield, "Improving Surveillance for Injuries Associated with Potential Motor Vehicle Safety Defects." *Injury Prevention*, April 2004, 10:88-92.

often requires the use of statistical tools and databases that are outside of general consumer needs. By simply making the data available, the agency makes it possible for anyone interested to use the tools of their choice. This method is employed by NHTSA and effectively allows manufacturers and NGOs to access the latest data for analyses. NHTSA updates the downloadable files daily.

The accuracy of submitted data should be integrated into the design of the database. This will require the agency to find a balance between requiring the least amount of information while still maintaining the highest level of accuracy and minimizing the manual review of the data by agency staff. Accuracy should start with the complainant and the product identification. It is our firm belief that questioning the accuracy of the product problem described by the consumer is NOT the purview of the agency or manufacturers. Complaints should not be blocked, removed or otherwise flagged when a manufacturer claims the problem is not accurately described by the complainant. If this is allowed, the database becomes moot. Given the agency staff and budget, it is not feasible, or advisable, for the agency to become the arbiter of right and wrong between consumer and manufacturer allegations. There is a natural conflict between the consumer view of the product problem and the manufacturer's view.

The recent problems associated with unintended acceleration in Toyota and Lexus models provide a good example of how a company and its customers can be at odds. Toyota claims that these events are precipitated by errant and poorly designed floor mat interference with the accelerator pedals. However, many consumer reports do not support Toyota's theory. If, in this instance, complaints were said to be materially inaccurate by the manufacturer (or even NHTSA) if the consumer concluded floor mats were not the cause, then many of the complaints could be excluded preventing further analyses of the problems and potential root causes.

From a system design perspective, to ensure the ongoing integrity of submitted data, data deletion should not be done except in extreme circumstances, like verified fraudulent reports. Deleting data after a pre-set time frame is also unacceptable. Even after the data are no longer viable for surveillance and enforcement and products are off the market, historical comparisons and analyses provide important perspectives for all stakeholders.

Consistent and well-documented guidelines for agency staff or contractors who interact with the data and consumers are critical for data integrity and maintaining the structural integrity of the system. Any changes made to the data structure should require ample public notice and accommodate new data in ways that will not alter prior data structures.

Consumer product safety is not just the purview of a government agency – it is a community effort involving all stakeholders – consumers, NGOs, manufacturers and the agency.

Finally, the agency should consider incorporating recalls and closed investigations into the database search structure. When consumers search for complaint information on a product or product category, they should be able to access recall and investigation

information without conducting a separate search in another database. Our commercial database ([www.VSIRC.com](http://www.VSIRC.com)) allows users to search for agency complaints, investigations, recalls, and crash and compliance tests in one search. Results are organized in a tabbed interface that provides users with the relevant information at a glance and doesn't require navigating to multiple datasets and re-searching the same product.

## **2. Reports of harm:**

- How should the CPSC design the incident report form so that it is clear and easy for users to complete?
- From a design perspective, how should the CPSC deal with incomplete reports of harm?
- Should the incident report form check for inaccurate information? How?
- What, if any, instruction to users should be included on the incident reporting form?
- Should the incident report form contain links to outside websites? Please explain your reasoning.
- What, if any, disclaimers or qualifications should appear on the incident report form?
- Should any category of persons be excluded from submitting reports of harm for inclusion in the public database, and, if so, by what means?
- Should reports of harm submitted by telephone or paper meet the same statutory time frames for submission in the public database?
- What should a description of the consumer product entail and why?
- What means can the CPSC employ to ensure that the correct manufacturer and/or private labeler are identified in a report of harm?

The primary challenge to incident report form design is creating one that collects detailed enough information for data analysis in a simple, quick format that does not overwhelm complainants. To that end, the form should have as few required fields as possible to ensure complaint accuracy while providing additional fields that can be filled in if the complainant has additional information. If the electronic form spans multiple screens, complainants should have the option to review and edit his/her submission at any point in the process. The form should consist primarily of discrete fields (ex. Manufacturer or private label name, model, model number, UPC Code) as well as a free-form incident description field where complainants can provide detailed information and notes that fall outside of the other fields.

Incident form submission should be contingent on core fields being populated. The web form should not allow for user submission without population of those fields.

Users should be instructed to answer questions as thoroughly and completely as possible. They should be encouraged to reference documents associated with the purchase and use of the product while filling out the form and have the ability to upload supporting

documents and/or photos – with the caveat that they exercise discretion and include only those materials that are most relevant.

Obtaining a useful description of the consumer product is one of the greatest challenges of the public database. In many cases, complainants will be able to provide manufacturer and/or private labeler and model or model number of the product. The combination of those two pieces of information is an adequate product description.

Unfortunately many products, once removed from packaging, are not labeled with that information. This is particularly true for products manufactured by companies that are less likely to conduct or conform to appropriate safety testing, adding importance to the role of the CPSC in monitoring consumer incidents involving those products. For that reason, we propose an alternative suitable product description for unlabeled products, consisting of product category (e.g., blender, crib, etc.) and detailed product description, asking specifically for a brief description of the appearance of the product (i.e., size, color, markings on product). The form should be constructed in such a way that consumers are able to submit if they provide either manufacturer and/or private labeler AND model name and/or model number, or product category and detailed product description.

Given the varied nature of the products and incidents that will be captured by the form, it is not realistic for the form to catch inaccuracies.

CPSC can only request that consumers provide information as accurately as possible. Providing an auto-fill feature (rather than a long pull-down listing manufacturers, models, etc.) can help facilitate accurate data entry. The agency will want to avoid the multitude of potential spellings and acronyms for the same product or model.

It is not realistic to expect the agency to verify the accuracy of every complaint submitted. Further, given the varied nature of the product covered by the database, there is no obvious way to automate the verification process.

The incident report form should not contain links to outside websites. However, if the complainant chooses to include a URL relevant to the product or complaint in his/her incident description, that should be permitted.

Complainants should be made aware that their contact information will be used by the agency only, unless they give the agency express written permission to share that information with the manufacturers and/or private labelers. Prior to final submission of the report form, users should be asked to agree to (anonymous) inclusion in the database. At that point, they should also be given the option to allow the agency to release their contact information to the manufacturer or private labeler.

No category of persons should be excluded from submitting reports of harm for inclusion in the public database.

All reports of harm, regardless of method of submission, should meet the same statutory time frames for submission in the public database.

A complainant should be required to submit his/her name, address, and phone number and/or e-mail address. Requiring either phone number or e-mail address ensures that the agency will have a quick method for following up on a complaint while allowing complainants without both a phone number and e-mail address (or those who aren't comfortable submitting or the other) to submit complaints.

### **3. Manufacturer notification and response**

- What means should the CPSC employ to notify manufacturers and private labelers regarding a report of harm within the five day statutory time frame?
- Given the statutory timeframe for notification, should manufacturers and private labelers be able to "register" contact information with the Commission for the purposes of notification of a report of harm? Please explain your reasoning.
- What form of contact information should be acceptable, *i.e.*, electronic mail only?
- What other issues should the CPSC consider?
- What, if any, authority does the CPSC have to withhold a report of harm from the public database if a manufacturer or private labeler claims the report contains materially inaccurate or confidential information?
- What means should the CPSC employ to allow manufacturers and private labelers to submit comments regarding a report of harm or to designate confidential information?
- What issues should the CPSC take into consideration when developing such process?
- If a manufacturer or private labeler requests that a comment associated with the report of harm be made available in the public database, what, if any, circumstances should prevent such comment from inclusion in the public database?
- What, if any, circumstances may arise which restart any timeframes contemplated in the statute with regard to manufacturer notification and responses?
- How can the CPSC ensure that manufacturers and/or private labelers do not use a submitter's contact information for purposes other than verification of a report of harm? By what means can the CPSC enforce such provision?

Our comments here are limited to the questions on withholding reports of harm and manufacturer or private labeler comments on reported hazards.

Please see our comments in Section 1. Data Analysis and Reporting. Again, our position is that accuracy should start and end with the complainant and the product identification. Determining the accuracy of the product problem as described by the consumer, or allowing manufacturer comments on the consumer description, creates a conflict that can't be resolved in the context of this database. The database is simply consumer reporting tool and the basis for surveillance activities. The database and the

complainants' reports do not alone serve as determinants of defect. Careful review of the data, in conjunction with other methods of product safety investigation, are still required.

It is generally understood that complaints to NHTSA are unverified consumer complaints with no endorsement of accuracy. This system has been in place for decades and web-based since the late 1990s. The result has been neither catastrophic nor overly contentious to any of the stakeholders. Agency defects investigators mining the data for potential trends have the ability to examine the complaints in context of other surveillance data sources ranging from manufacturer-submitted Early Warning Reporting of death, injury, property damage and warranty claims, to crash-based data like the Fatality Analysis Reporting System (FARS). Investigators must still examine the data in conjunction with engineering evaluations of the components or products themselves.

#### **4. Additional database content:**

- What additional categories of information should the CPSC include in the public database and why?
- What, if any, information cannot be included in the public database pursuant to the statute and why?
- Under what circumstances are the provisions of section 6(a) and (b) of the CPSA relevant to the provisions of section 6A of the CPSA, especially with regard to additional categories of information that may be included in the public database?

As noted in the first section, Data analysis and Reporting, we strongly suggest that a component to the consumer search include recalls, closed investigations and consumer complaints in a singular search. Consumers who are taking the time to examine complaints are certainly interested in recalls and investigations of the specific products or category of products they are researching.

#### **5. Materially Inaccurate Information**

- Is the CPSC's responsibility with regard to materially inaccurate information limited to reports of harm and manufacturer comments? Why or why not?
- What, if any, measures should the CPSC employ to prevent the submission of fraudulent reports of harm while not discouraging the submission of valid reports?
- What types of information constitute materially inaccurate information? Please explain your reasoning.
- How should the CPSC process a claim that a report of harm or a manufacturer comment contains materially inaccurate information, both before and after such information has been made available in the public database?
- How should the CPSC allow a submitter or others to claim that a manufacturer has submitted materially false information?



- Given the statutory timeframe, how should the CPSC review claims of materially inaccurate information?
- What specific disclaimers should the CPSC make with regard to the accuracy of the information contained in the public database and why? Where should such disclaimers appear and why?

At the last meeting, much of the discussion on materially inaccurate information centered on manufacturers concerns that fraudulent complaints from competitors and / or consumers will taint the system. Based on our experience with the NHTSA data, we have not found any evidence to support such a theory. Can a fraudulent complaint be lodged by a savvy competitor or consumer? Undoubtedly. However, this is likely to have a nominal affect on the data and manufacturers. These problems have not been identified in the NHTSA system.

Our primary concern is with accuracy is in eliminating spam or web “robots” from populating the database and setting up a reasonable baseline of required fields that will allow the agency to verify the complainant and identify the product.

See our comments to Section 1 Data Analysis and Reporting.

**Stevenson, Todd**

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**From:** Sean Kane [sean@safetyresearch.net]  
**Sent:** Tuesday, January 05, 2010 11:30 AM  
**To:** CPSC-OS  
**Cc:** Hucker, Thomas  
**Subject:** "Public Workshop on Consumer Product Incident Database"  
**Attachments:** CPSC Public Database Comments SRS FINAL.pdf

Mr. Stevenson:

Attached are our comments for the five Public Workshops on Consumer Product Incident Database.

Thank you

Sean

**Sean Kane**  
**Safety Research & Strategies, Inc.**  
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**Rehoboth, MA 02769**  
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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010
<b>Received:</b> January 04, 2010
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0007

Comments from Public Citizen

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## Submitter Information

**Name:** Christine Hines

**Address:** United States,

**Organization:** Public Citizen

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0007.1:** Comments from Public Citizen



**STATEMENT OF CHRISTINE HINES  
CONSUMER AND CIVIL JUSTICE COUNSEL  
PUBLIC CITIZEN**

**BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY  
INCIDENT DATABASE**

**NOVEMBER 10, 2009**

Thank you to the Chairman and the Commissioners for allowing me to speak today on behalf of Public Citizen to offer our views on the establishment of a public consumer product safety incident database. My name is Christine Hines and I am Consumer and Civil Justice Counsel in Public Citizen's Congress Watch division. Public Citizen is a national nonprofit consumer advocacy organization.

In January 2008, a Public Citizen report revealed that the Consumer Product Safety Commission took an average of 209 days (a little less than eight months) to warn the public about hazardous products in the 46 cases from 2002 to 2008 in which the Commission levied fines against the manufacturers. It was clear that while information regarding dangerous products was known by the manufacturers and the agency, it was withheld for unreasonable amounts of time from parents, children and other users of these products. Consumers remained at risk while the dangerous products stayed on the market. We found that the delay in reporting dangerous products or issuing recalls was partially caused by the agency's stunning lack of urgency and lack of resources. The agency disputed our findings but did not provide any materials in support of its claims. Through a Freedom of Information Act request, we sought additional information, including the dates on which manufacturers and the CPSC became aware of hazards and the dates on which the CPSC informed the public about them. The agency refused to release its data, citing confidentiality.

In summer 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA). The CPSIA created new requirements for the CPSC, granted it new authority, created a new kind of urgency at the agency, and gave it additional resources. The provision requiring the creation of a public consumer product database is critical to protecting consumers from potential

hazards, helping to close the time gap between the manufacturer learning of a hazard and the information actually reaching consumers.

The database empowers both the agency and the public. It will allow members of the public to assist themselves in researching a product's safety record and to quickly report potential hazards. The database will also allow the agency to notify manufacturers and allow those manufacturers to respond in a timely manner. Additionally, the information on the database will be current. But most important, it will reduce the time it takes to identify and inform the public of hazardous products by including the public in the conversation on recognizing potentially dangerous products – a conversation that historically has been limited to industry and the agency.

Industry representatives have criticized the creation of a database. They are concerned about the accuracy of incident reports as well as the possibility that confidential business data will be released on the database. But the database will help responsible manufacturers by giving them feedback on potential product hazards. And the database cannot possibly include confidential business information because its contents will be generated by consumers; by definition, information in the hands of consumers cannot be considered confidential business information. Further, manufacturers' opportunity to give feedback could help ensure that the database is a credible resource, particularly when contrasted with the alternative of private entities building and maintaining their own online databases without industry feedback.

This database, if implemented properly, has the potential to address our primary concern – ensuring that critical safety information for products is shared in a timely manner among all interested parties: the Commission, other federal agencies, health professionals, consumer interest groups and most importantly, consumers.

We suggest the following safeguards or actions to assist in building a useful database.

- 1) First, we urge full compliance with the CPSIA's requirements, particularly the provisions regarding time limits. The database provision allows time for the Commission to receive and review incident reports and forward them to manufacturers. It also allows manufacturers sufficient time to report on inaccuracies or other objections before reports are posted. The agency must comply with the time requirements to ensure that the database fulfills its purpose. Delays in posting incident reports will only increase the chances that a hazardous product will harm unaware consumers. We propose that the database be engineered to automatically publish incident reports to the public within the required 10 business days of receipt. An automatic posting, as opposed to a manual posting, may help to curtail the staff's work load in addition to ensuring timeliness.
- 2) Second, the CPSIA specifically identifies certain members of the public whose reports will be included in the database: consumers, government agencies, health care professionals, child service producers, and public safety entities. We recommend that the database provide a means for reporting parties to identify, if they choose, the group they belong to when submitting reports. This will help the agency to attach certain weight to reports based on the reporter.
- 3) We urge the Commission to allow users to submit as much detail as possible regarding a product and ensure that the information is posted on the online database, so that consumers or third-party groups can adequately research and obtain useful data on product histories.
- 4) The Commission's report to Congress on the implementation of the database devoted several pages to a description of its public affairs campaign. While we agree that public

outreach is important for educating consumers, the report could have included more detailed information on the agency's plan for the database itself. The plan included three screen mock-ups, but we would have liked to review data that would typically appear in search results or in report submissions. In addition certain details were left unexplained, such as what information would be provided to individuals who follow the "click for more details" link shown on the search results mock-up page.

- 5) Finally, the industry portal is potentially troublesome. The portal may allow for ease of communication between the agency and industry regarding incident reports as well as protection of trade secrets and other legally protected data. But the portal must not become a harbor for information that ultimately should be made available to the public. We urge the Commission to use extreme caution when determining which information to "segregate" and which information to release to consumers.

Public Citizen supports the Commission's efforts in implementing a vigorous consumer product database, and we are committed to educating consumers about the database and ensuring that they will be able to use this important tool to the fullest extent possible. Thank you for holding this hearing.





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**STATEMENT OF CHRISTINE HINES  
CONSUMER AND CIVIL JUSTICE COUNSEL  
PUBLIC CITIZEN**

**BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY  
INCIDENT DATABASE**

**Submitted January 4, 2010**

Thank you to the Commission for allowing me to speak at this workshop on behalf of Public Citizen to offer our views on the establishment of a public consumer product safety incident database authorized under the Consumer Product Safety Improvement Act.

We previously presented a statement at the Commission's November 10th hearing. At that hearing I emphasized Public Citizen's strong support for the database. We believe it will empower both the agency and the public. It will be critical to protecting consumers from potential hazards because it will reduce the time it takes to identify and inform the public of hazardous products, as well as enabling concerned consumers to research products themselves. The database will also help responsible manufacturers by giving them timely information from customers on potential product hazards.

The Commission has identified several areas of discussion for this workshop, including data analysis and reporting; requirements for reports of harm submitted to the database; concerns for accuracy in those reports; and manufacturer notification and response to the reports.

The CPSIA requires that the information submitted to the database be organized in a way that serves the public interest and facilitates easy use by consumers. The public at large should be able to access all the information submitted to the database, except for consumers' private contact information. That is, all reports of harm, the information derived by the Commission from voluntary and mandatory recall notices, and the manufacturer or private labeler's comments and response to the incident report must be publicly available and accessible. For ease of use, the data also should be made available in a downloadable format for members of the public who prefer to review and analyze the information all together, as well as in a format suitable for narrow, specific searches. Further, in addition to the CPSIA requirements, we recommend that the data be sortable and accessible by categories similar to those on the Commission's existing

consumer product incident report form, such as type of injury and other harm, product condition, approximate date of purchase, and specific product manufacture information.

At the previous hearing, a number of industry representatives voiced concern over the incident reports, especially regarding accuracy. Some suggested that a flag system be implemented to highlight reports whose accuracy is doubted. We believe that such a flag system is unnecessary. The CPSIA contains reasonable protections to safeguard against inaccurate information. Manufacturers receive notice of reports before they are published online, and the CPSIA allows substantial feedback from manufacturers to the agency and to the public regarding the safety of their products. Manufacturers may even respond publicly in the database itself.

In addition, the CPSIA requires the Commission to take certain action when materially inaccurate information is submitted to or discovered in the database. We urge the Commission ensure that the inaccurate information is indeed material before taking action; that is, it should be substantial and important. The Commission should not delay the publication of incident reports on the basis of minor, superficial errors, particularly those that are not substantive.

Finally, we urge the protection of consumers' private contact information. The CPSIA permits the Commission to provide consumers' contact information to the manufacturer or private labeler of the product with the express written consent of the person who submitted the report of harm. The Act also bars a manufacturer or private labeler from using or disseminating consumers' information to any other party for any purpose other than verifying a report of harm. We request that the Commission emphasize that misuse of consumers' private information will not be tolerated, and urge it to take any necessary action to punish violators.

**Stevenson, Todd**

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**From:** Christine Hines [chines@citizen.org]  
**Sent:** Monday, January 04, 2010 6:07 PM  
**To:** CPSC-OS  
**Subject:** Public Workshop on Consumer Product Incident Database  
**Attachments:** PC\_database hearing comments110309.pdf; pc\_database wkshop comments01042010.final.pdf

Dear Todd A. Stevenson,

Attached are two documents relating to the workshop on the consumer product incident database. The first is my statement for the November 2009 public hearing on the database. The second document contains additional comments for the workshop.

Sincerely,

Christine Hines  
Consumer and Civil Justice Counsel  
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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0008

Comments from the Association of Home Appliance Manufacturers (AHAM)

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## Submitter Information

**Name:** Wayne Morris

**Address:** United States,

**Organization:** Association of Home Appliance Manufacturers (AHAM)

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0008.1:** Comments from the Association of Home Appliance Manufacturers (AHAM)

**Public Workshop on Consumer Product Incident Database**  
Data Analysis and Reporting; Reports of Harm; Manufacturer Notification and Response;  
Additional Database Content; and materially Inaccurate Information

Oral Comments of the Association of Home Appliance Manufacturers (AHAM)

January 4, 2009

**Workshop 1: Data analysis and reporting**

AHAM will comment on how the Commission can design the database to ensure the accuracy of submitted data and the ongoing and perpetual integrity of the submitted data. In particular, AHAM will comment on the format in which data should be made available to the public.

The database should be designed in a way that facilitates the collection of all of the statutorily required information. If selected to be on the panel for this workshop, Wayne Morris (AHAM staff) will speak on behalf of AHAM.

**Workshop 2: Reports of Harm (Incident Report Form)**

AHAM will comment on the information that should be included on the incident report form (including information that should be included in the product description) and how the Commission should handle incomplete reports of harm. AHAM will also address issues relating to the accuracy of reports and instructions that will help users enter accurate and useful information on the report form. In addition, AHAM will comment on the disclaimers that should appear on the incident report form.

All parties have an interest in a database that contains truthful, valid, and complete information. Thus, it is critical that the incident report form have fields for information mandated by the statute. Manufacturers and private labelers can best respond to incident reports if they have full and complete information about the reported incident. If selected to be on the panel for this workshop, either Wayne Morris (AHAM Staff) or Bradford Bush (Lasko Products, Inc.) will speak on behalf of AHAM.

**Workshop 3: Manufacturer Notification and Response**

AHAM will comment on methods for accurate and efficient notice to manufacturers and private labelers that will aid manufacturers and private labelers in responding to reports of harm within the tight and stringent statutory timeframe. AHAM will also address the Commission's authority to withhold materially inaccurate and confidential information from the database and the process the Commission should employ to allow manufacturers and private labelers to submit comments regarding materially inaccurate and confidential information.

It is critical to the accuracy of the database that manufacturers have a meaningful opportunity to comment on incident reports submitted for inclusion in the public database. Similarly, the Commission must exercise its statutory authority to withhold materially inaccurate and confidential information from the public database so that the information contained in the database is as accurate as possible. If selected to be on the panel for this workshop, either Wayne Morris (AHAM Staff) or Bradford Bush (Lasko Products, Inc.) will speak on behalf of AHAM.

#### **Workshop 4: Additional Database Content**

AHAM will comment on information that cannot be included in the public database per the statute. AHAM will discuss this issue specifically as it relates to Sections 6(a) and (b) and Section 6A of the CPSA.

Per the CPSIA, documents submitted pursuant to CPSA Section 15(b) can only be disclosed under certain circumstances. Section 6A(f)(2) of the CPSIA preserves that restriction and, thus, such information cannot be included in the public database. Furthermore, CPSIA Section 6A(b)(1)(B) only permits information “derived by the Commission” from CPSA Section 15 data to be included in the public database, and accordingly the Commission may only post its own reports in the public database, not reports received from manufacturers under CPSA Section 15(b). Congress specified its intent in this regard, and the Commission must carry out that intent. If selected to be on the panel for this workshop, either Charles Samuels or Jennifer Cleary (both AHAM Counsel) will speak on behalf of AHAM.

#### **Workshop 5: Materially Inaccurate Information**

AHAM will discuss the issues surrounding fraudulent reports and materially inaccurate information. AHAM will comment on the types of information that constitute materially inaccurate information. AHAM also has comments regarding how the CPSC should process reports of harm and manufacturer/private labeler comments that may contain materially inaccurate information, and how it should do so within the statutory timeframe. AHAM will also comment on the specific disclaimers the CPSC should make with regard to the accuracy of the information contained in the public database and the reasons those disclaimers should be made.

It is critical that the Commission have a clear review process and criteria for determining which reports will be included in the public database and which will not. For example, the Commission should define what constitutes “materially inaccurate information.” Furthermore, the Commission must use the statutorily required disclaimer and should use it consistently throughout each report on the database. If selected to be on the panel for this workshop, either Charles Samuels or Jennifer Cleary (both AHAM Counsel) will speak on behalf of AHAM.

## **Stevenson, Todd**

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**From:** Morris, Wayne [WMorris@AHAM.org]  
**Sent:** Monday, January 04, 2010 5:25 PM  
**To:** CPSC-OS; Kelsey, Mary  
**Cc:** bbrush@laskoproducts.com; Cleary, Jennifer; Samuels, Chuck; lee.bishop@appl.ge.com; Morris, Wayne  
**Subject:** Public Workshop on Consumer Product Incident Database  
**Attachments:** AHAM Oral Comments Database 010410.pdf

Mr. Stevenson and Ms. Kelsey,

Thank you for the opportunity to support the CPSC in the January 11 and 12 workshops on the Public Incident Database. We have requested the opportunity to speak at the Workshop on the 5 panels and we have prepared a synthesis of our remarks (included) with this email.

If you have any questions, please contact me.

Best regards,

**Wayne Morris**  
**Vice President, Division Services**  
1111 19th St. NW, Suite 402, Washington, DC 20036  
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# PUBLIC SUBMISSION

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**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0009

Comments from Taser International, Inc.

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## Submitter Information

**Name:** Peter Holran

**Address:** United States,

**Organization:** Taser International, Inc.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0009.1:** Comments from Taser International, Inc.



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December 9, 2009

Mr. Todd A. Stevenson  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

via e-mail: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

**RE: Implementation of a Searchable Consumer Product Safety Incident Database**

Dear Mr. Stevenson:

On behalf of TASER International, Inc. (TASER), the leading manufacturer of electronic control devices (ECDs) used by law enforcement and citizens to protect life and advanced audio-video equipment to protect truth, I want to convey TASER's commitment to working with the Consumer Product Safety Commission (CPSC) in identifying and addressing dangerous consumer products. We take pride in our responsiveness to the CPSC and in the fact that TASER® brand products are recognized as generally safe and effective and used by more than 14,800 law enforcement agencies in more than 43 countries and owned by more than 200,000 private citizens.

For that reason, we hope the CPSC will take every opportunity to make the new Consumer Product Safety Database a valuable and useful public safety tool – one that provides clear, credible information to allow U.S. consumers to make informed purchasing decisions. To achieve that goal, we believe the CPSC's proposed implementation plan must be amended to ensure the following:

- 1. The CPSC must develop and publish a process for ensuring that comments received are valid prior to posting, and for removal of posted comments proven to be inaccurate or without merit.** The agency must devise and publish for public comment an established review process for complaint submissions and removal. The requirements must include mandatory product information and the evaluation criteria by which reports will be reviewed prior to posting or removal. The proposed process must also identify the criteria by which manufacturers and retailers can demonstrate a proposed comment is inaccurate, misleading or otherwise improper for posting.



**TASER**  
Protect Life

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Fax: (480) 991-0791  
www.TASER.com

2. **To ensure meaningful review, the CPSC should require consumers to provide full product make, model, serial number, and purchase venue information.** Only then will retailers and manufacturers be able to identify and correct product flaws for public safety benefit. This requirement has special importance for products like TASER's whose brand recognition is so widespread that our trademark is generally popularized and individuals frequently misidentify generic, poor quality stun devices with highly-engineered TASER brand products.
3. **The CPSC must provide manufacturers and retailers sufficient time for appropriate review.** The agency's report to Congress indicates reports will be published to the public within ten (10) business days of receipt by the CPSC. This extremely truncated period shaves a full five (5) days off the statutorily permit review period and affords product providers inadequate time for meaningful review and discussions with the agency. The agency should permit the full 15 business day statutory review period prior to comment posting.
4. **The CPSC must ensure that comments posted address solely consumer items.** As the leading manufacturer of electronic control devices for law enforcement, TASER brand products are frequently involved in volatile police incidents where questions of use and police policy, not product performance, may arise. These situations receive extensive local, state and federal government review, and well as, media interest. However, as the issues at hand involve law enforcement policies and training, not product defects, they are outside the purpose and mandate of the Consumer Product Safety Incident Database. And in fact, since no consumer products are involved, they are outside the jurisdiction of the agency as a whole. The CPSC must take steps to ensure the database is directed to covered items and prevent the posting of comments unrelated to consumer products.

With these corrections and protections, the proposed database can serve its purpose of providing consumers the information they need to make informed purchasing decisions. Anything less will devalue a potential public resource into little more than a government-sponsored blog expounding some facts but mostly opinions and worse - misinformation. I urge your consideration and incorporation of these comments in your final implementation plan.



17800 N. 85th St.  
Scottsdale, AZ  
85255-9603

Phone: (480) 991-0797 • (800) 978-2737  
Fax: (480) 991-0791  
[www.TASER.com](http://www.TASER.com)

If I can answer any questions, please feel free to contact me directly. I can be reached at (602) 388-0160 or at [pete@TASER.com](mailto:pete@TASER.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. Holran".

Peter T. Holran  
Vice President, Government and Public Affairs

**Washington, D.C. Area office:**  
1100 Wilson Boulevard, Suite 1210  
Arlington, VA 22209  
703-528-2658  
(c) 602-388-0160

**Stevenson, Todd**

---

**From:** Peter Holran [pete@TASER.com]  
**Sent:** Wednesday, December 09, 2009 4:24 PM  
**To:** CPSC-OS  
**Subject:** TASER Int'l comments - CPSC Searchable Database 12/09/2009 17:20  
**Attachments:** DOC120909.pdf

Mr. Stevenson,

Attached please find the comments and concerns of TASER International with regards to the proposed Consumer Product Safety Commission searchable Consumer Product Incident Database.

My best,  
Peter Holran

---

**Peter T. Holran**  
**Vice President Government and Public Affairs**  
**TASER International**

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Arlington, VA 22209  
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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010
<b>Received:</b> February 02, 2010
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0010

Comments from Galaxy Fireworks, Inc.

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## Submitter Information

**Name:** Patrick Cook

**Address:** United States,

**Organization:** Galaxy Fireworks, Inc.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0010.1:** Comments from Galaxy Fireworks, Inc.

**Galaxy Fireworks, Inc.**  
**204 E. Martin L. King Jr. Blvd.**  
**Tampa, Fl. 33603**  
**813-234-2264**

January 7, 2010

JAN 15 2010 - OS

Consumer Product Safety Commission  
Office of the Secretary  
4330 East West Highway  
Bethesda, MD 20814

Attn.: Mr. Todd A. Stevenson, Secretary

Re: Establishment of a Public Consumer Product Safety Incident Database

Dear Secretary Stevenson,

Our company is in the consumer fireworks business, and as such we import a large majority of our products from China. Our products are one of the many that are included in the upcoming certification requirements and as such are tested for conformity to current CPSC standards prior to leaving the factory. We are proud to say that we, as well as many other fireworks industry members, have been testing our products voluntarily for many years now to ensure that our products are among the safest on the market.

That being said, I have several concerns over the use of an online database for product injuries as mandated. Some of the primary areas that need addressing are the notification times and the actual claim of harm from a product. Another area lies in the verification processes and procedures for both the claim itself and claims that are alleged to be materially inaccurate.

In reviewing the *Notice of Public Workshop* (December 7, 2009) and the areas of discussion that are noted, I have come up with the following comments. In regards to the submission of the report of harm, the CPSC asks the question of how to deal with incomplete reports and whether or not reports initiated by means other than the electronic form in the database should meet the same submission time frames as the electronic submission. These questions have very simple answers. If the report is incomplete it is invalid, and all submissions must meet the same time frame criterion.

The question is raised as to what information should the consumer product description contain, and why. At a minimum this information should contain the item name, any identifying numbers (e.g.: part number or serial number), the brand name on the item, any manufacturers identification, the date the item was purchased, and where the item was purchased at.

A picture of the item(s) that caused the harm should also be required. Pictures today, whether taken with a digital camera or a cell phone, are readily available and the information that they provide is easy to access and transmit. This could also be a tool that is used in verifying that authenticity of the claim as well as aid in assisting in the verification of the manufacturer. A secondary port should be available for other media that could be utilized to verify the specific product, harm or any ancillary damages that may have occurred as a result of the incident with the product.

As this database is to be readily available to the public at large, it is imperative that the proper manufacturer is identified in any report of harm prior to the report being published online. To do otherwise could result in unnecessary damage to a company's reputation and open the door for potential litigation against the wrong company. The consumer fireworks industry is a good example of an industry where one company's products may be misidentified as another company's simply by the similarity of the items in form or function.

To the consumer a sparkler is a sparkler, and they don't readily identify where or who they purchased that sparkler from. For example, there are two fireworks stores and a multitude of temporary sales tent selling fireworks within a five mile radius of our main store in Tampa, Florida. If a consumer has an incident with that sparkler the odds are very high that he will state that he purchased that item at the sales facility closest to his home, regardless of where the actual purchase took place. This is simply due to the fact that he is familiar with the facility that he sees on a regular basis and that then becomes the first response to the "where" question. We see these same phenomena happen many times over the course of a sales season with people attempting to return unwanted products.

It is also imperative that the submitter provide current contact information that will allow both CPSC and the manufacturer's representative to contact the individual that filed the report. At a minimum this should include their name, address, and telephone number at which they may be reached. An email address should also be an option that is reviewed. Anonymous reports should not be posted.

While the CPSC should not totally ignore an anonymous report, they should not be posted as they cannot be verified. This will allow both the CPSC and industry to follow up on any report made for the purpose of gathering more information on the incident in question. We feel that there should be a disclaimer posted by the CPSC before the report is started that informs the person filing the report that the material presented is going to a public database, and that their contact information is being provided to all interested parties solely for verification purposes.

That being said, it is again imperative that the CPSC provide a copy of the report to the manufacturer within the five day statutory time period to allow time for an investigation into any alleged event. To expedite this process the CPSC needs to create some sort of voluntary registry that will allow industry to file company (or item) contact information. This registry should allow for both electronic and telephone contact information as well as an individual designated to be the point of contact.



The CPSC should take steps to ensure that industry has every opportunity to respond to any alleged incident. After affirming that the correct party has been notified, and there is no trade secret issues involved, all responses made should be entered into the public record. However, if there is a valid claim by the manufacturer that the report is invalid, incomplete, or inaccurate then the CPSC must take steps to suspend any statutory time limits imposed on the report until the claim may be adjudicated by the Commission. If the report is found to be valid and industry files a comment in regards to this report, it should be entered into the public record immediately. All response times in regards to that report should be reset at that time.

The Commission should not suspend or refuse to post any comment made in response to a report. For example, an individual holds a firecracker in his hand after it is lit and suffers burns and associated skin damage after the device functions. Here the consumer explicitly disobeyed the instructions and warnings that are on each and every package of firecrackers legally sold in the United States. Typical industry response would be that the incident occurred as a result of improper use and would not have happened if the consumer had used common sense and followed the instructions provided.

This response should not be withheld from the database simply because it did not have a corrective action on the part of industry. The public needs to know that if they do stupid things a tragedy could result. We need to get away from the “touchy-feely” way that information is presented these days in order to prevent injuries due to sheer stupidity on the part of the consumer. The same can be said for incidents which involve items that have been modified without the manufacturer’s knowledge after the consumer has taken possession of the item.

The CPSC has a responsibility to see that any report presented must be materially accurate, not only to ensure that the proper industry members are notified, but to ensure that the public is accurately informed as well. The onset of the electronic age has greatly facilitated the transmission of information, but this is a double-edged sword. Incorrect information travels as fast (or faster in some instances) as correct information, and can have a disastrous effect on the sales or perception of a product by the public. In this weak economy this must be prevented at all costs. It is better to err on the side of caution and not post a report than it is to post one that contains improper or incorrect information.

Some of the things that we see that would make a report materially inaccurate would be the misidentification of the manufacturer, an incorrect or incomplete allegation of the facts of the report, and/or obvious misuse of the product by the consumer. Other conditions that would render the report materially inaccurate would be if the device or products were homemade or modified, or the alleged device was only presumed to be the cause of the incident or injury (e.g.: the house fire that burned two fire fighters was thought to be caused by...). These reports must be based on factual confirmed data, not suppositions.


The CPSC therefore has the duty to refuse to process any claim containing inaccurate content. If an inaccurate report is inadvertently published in the database, then it must be removed as soon as possible. A simple retraction on the part of the Commission will not suffice because as long as the report is available for public scrutiny the misinterpretation of the data by the public will continue.

This is why the Commission must address these issues immediately and strive to make the affected industry member aware of the incident as soon as possible. It cannot be emphasized enough that reports should not be published online until it has been verified for accuracy and a response received from industry. If the Commission makes the report public without contacting the affected industry member, or disregards an industry request not to make a report public, then the Commission needs to provide the industry member with the reasons (in writing) for this release of information.

I would like to thank you for providing me with the opportunity to provide you with my thoughts and comments on the proposed database. While I am a firm believer in informing the public on hazards associated with consumer products, it has to be verifiable information. Any false information or suppositions can have a strong negative effect on a company or industry. In these tough economic times we do not want to hurt our economic base simply to satisfy a knee-jerk reaction.

Please do not hesitate to contact me at the number noted above if there are any questions that I or my staff may assist you with. I may also be reached by email at [galaxyfire@aol.com](mailto:galaxyfire@aol.com) . Again, thank you for your time.

Sincerely,



Patrick Cook  
General Manager

# PUBLIC SUBMISSION

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<b>Received:</b> January 22, 2010
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0011

Comments from Union of Concerned Scientists

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## Submitter Information

**Name:** Celia Wexler

**Address:** United States,

**Organization:** Union of Concerned Scientists

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0011.1:** Comments from Union of Concerned Scientists

## PUBLIC WORKSHOP ON CONSUMER PRODUCT INCIDENT DATABASE

Comments Submitted by the Scientific Integrity Program, Union of Concerned Scientists

### ADDITIONAL DATABASE CONTENT

The Scientific Integrity Program of the Union of Concerned Scientists strongly urges the Commission to include in its consumer product incident database all technical research, reports on emerging hazards and any other staff-generated research that will improve the public's understanding of consumer product safety. We also use the Commission to provide trend and demographic analyses that will help consumers make better use of the information contained in the database.

Our talks with past and current CPSC employees lead us to believe that too often the Commission has failed to make good use of taxpayer-funded staff work products, and these work products have been ignored and kept secret. This not only is frustrating to CPSC scientists, economists, behavioral psychologists and other staff experts, it represents a gross waste of government resources.

We applaud the recent practice by the Commission to submit draft research reports for public comment. However, we believe that any final report should explain how the Commission revised the report to respond to both public and private comments, concerns and questions. That explanation must be part of the final public document.

We also urge the Commission to review staff research completed within the past five years. If the research remains useful and relevant, it should be publicly accessible. All staff research should be publicly accessible within 30 days of completion. If the research includes proprietary information, that information may be redacted. But redactions should be made with surgical precision to allow for the widest possible dissemination of information.

If the Commission opts to keep staff research on its website but not in the database, the database should include a link to all staff research papers, so that anyone interested in more follow-up information on a particular safety issue will be able to find it.

### INFORMATION SUBMITTED BY WHISTLEBLOWERS INSIDE AND OUTSIDE THE AGENCY

The Commission ought to accept, in certain circumstances, information submitted anonymously by whistleblowers who fear retaliation from their employers. If the Commission receives detailed consumer product information from a whistleblower inside or outside the agency, the Commission should protect the identity of the whistleblower. If the Commission investigates the whistleblower's claims, and they are valid, the information should be part of the public database. ~~Because the Commission has vetted the whistleblower's report, the source of this information can be the Commission.~~

~~The Commission ought to accept, in certain circumstances, information submitted anonymously by whistleblowers who fear retaliation. The person providing the information must offer credible detailed data that the Commission is able to verify as true. If information submitted by an anonymous whistleblower proves valid, it should be accessible on the public database and labeled as submitted by the Commission.~~

**Stevenson, Todd**

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**From:** Celia Wexler [cwexler@ucsusa.org]  
**Sent:** Friday, January 22, 2010 4:13 PM  
**To:** CPSC-OS  
**Subject:** [Possibly Spam]: PUBLIC WORKSHOP ONPUBLIC WORKSHOP ON CONSUMER  
PRODUCT INCIDENT DATABASE.doc  
**Attachments:** PUBLIC WORKSHOP ONPUBLIC WORKSHOP ON CONSUMER PRODUCT INCIDENT  
DATABASE.doc  
**Importance:** Low

Celia Wexler  
Washington Representative for Scientific Integrity  
Union of Concerned Scientists  
1825 K Street NW, Suite 800  
Washington, DC 20006-1232  
202-331-6952  
Cell: 202-390-5481

\*\*\*\*\*

Make your voice heard on important environmental  
and security issues--join the Union of Concerned Scientists  
Action Network at [www.ucSACTION.org](http://www.ucSACTION.org). It's quick,  
easy, and FREE.

# PUBLIC SUBMISSION

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Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0012

Comments from World Kitchen, LLC

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## Submitter Information

**Name:** Kerrie Campbell

**Address:** United States,

**Submitter's Representative:** Manatt, Phelps & Phillips, LLP

**Organization:** World Kitchen, LLC

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0012.1:** Comments from World Kitchen, LLC

**manatt**  
manatt | phelps | phillips

**Kerrie L. Campbell**  
Manatt, Phelps & Phillips, LLP  
Direct Dial: (202) 585-6526  
E-mail: KCampbell@manatt.com

January 29, 2010

**VIA ELECTRONIC MAIL  
AND HAND-DELIVERY**

Todd A. Stevenson  
Director, Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East-West Highway, Room 502  
Bethesda, MD 20815

**Re: World Kitchen, LLC, Comments on  
CPSIA Section 212 Public Database**

Dear Mr. Stevenson:

On behalf of World Kitchen, LLC ("World Kitchen"), we appreciate this opportunity to submit comments in response to the Consumer Product Safety Commission's ("CPSC") Notice of Public Workshop on the Establishment of a Public Consumer Product Safety Incident Database pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").<sup>1</sup> Specifically, the CPSC staff has requested views and input from stakeholders about the public database. World Kitchen respectfully submits the following comments and suggestions to ensure the integrity and usefulness of information posted on the CPSC's web site and to prevent the posting of inaccurate information that furthers no public safety interest and may be damaging to a company and its products or brands.

If the Commission has any questions about World Kitchen's comments, please contact me and we will promptly respond.

Sincerely,



Kerrie L. Campbell

cc: Joseph T. Mallof,  
World Kitchen President and CEO  
Deborah C. Paskin  
World Kitchen Chief Legal Officer

<sup>1</sup> See Establishment of a Public Consumer Product Safety Incident Database; Notice of Public Workshop, 74 Fed. Reg. 68053 (Dec. 22, 2009).



**BEFORE THE  
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION**

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Notice of Public Workshop on the Establishment )  
of a Public Consumer Product Safety Incident )  
Data Base Pursuant to CPSIA Section 212; )  
Request for Comments and Information )  
74 Fed. Reg. 68053 (Dec. 22, 2009) )

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**SECTION 212 PUBLIC  
CONSUMER PRODUCT  
SAFETY DATABASE**

**COMMENTS OF  
WORLD KITCHEN, LLC**

**Deborah C. Paskin  
Chief Legal Officer  
World Kitchen, LLC  
5500 N. Pearl Street, Suite 400  
Rosemont, IL 60018  
(847) 233-8588**

**January 29, 2010**

## **WORLD KITCHEN COMMENTS**

### **NOTICE OF PUBLIC WORKSHOP ON THE ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY INCIDENT DATABASE PURSUANT TO CPSIA SECTION 212; REQUEST FOR COMMENTS AND INFORMATION**

#### **I. INTRODUCTION**

World Kitchen, LLC ("World Kitchen"), is a global manufacturer of consumer products, including Corelle®, Corning Ware®, and Pyrex®-branded kitchen products. World Kitchen works hard to provide excellent products to consumers, including its Pyrex brand glass products, which have been made in the U.S. since 1915. Pyrex glass products are used in about 80 percent of U.S. homes and have maintained an excellent safety record for generations. World Kitchen continues to manufacture its Pyrex glass products for distribution in the United States in its Charleroi, Pennsylvania, plant with union labor, and its packaging displays the American flag and the "Made in the USA" label.

Since 1988, World Kitchen has manufactured more than 400 million units of glass products at its Charleroi plant. Because Pyrex glass bakeware is extraordinarily popular and has been used in American kitchens for generations, some consumers who experience unexpected breakage with their glassware have mistakenly reported that the product was "Pyrex," when, upon examination, the product is that of another manufacturer.

Unsubstantiated consumer reports (for example, unsubstantiated Internet reports) that a "Pyrex" product was involved in a breakage incident may, in fact, be inaccurate. In order to determine whether a report is accurate, the product must be examined to identify the manufacturer and to evaluate the cause of any reported breakage. There are numerous documented instances of consumers reporting breakage of a "Pyrex" product, but examination of the glassware confirmed that it was made by a different manufacturer. Similarly, examination of the glassware has often confirmed that the breakage occurred when the product was misused in a manner specifically warned against in the Safety and Usage Instructions provided with every Pyrex product. Thus, with a ubiquitous product such as glass bakeware, unsubstantiated and unconfirmed reports of breakage do not serve as a valid basis for assessing the safety or quality of the product, nor do they accurately inform consumers and other recipients of such reports on these issues.

Inaccurate reports create significant problems, including consumer confusion, unwarranted consumer alarm, and undue concern from the Consumer Product Safety Commission ("CPSC" or "Commission") staff, charged with overseeing the safety of over 30,000 consumer products with limited resources. These problems are severely compounded when the media publish inaccurate and misleading information attributed to unsubstantiated and unconfirmed incidents that contain factually inaccurate information, such as the wrong maker, brand, or product. For example, World Kitchen and its Pyrex brand have been the subject of inaccurate and misleading reports on the Internet and in the print and broadcast media. To ensure that consumers have accurate information, World Kitchen vigilantly seeks retractions and

corrections of misinformation to ensure that consumers are not misled or inappropriately alarmed, and to prevent harm to World Kitchen and its Pyrex brand.

World Kitchen supports the mission of the CPSC to protect consumers in close communication with the business community. Consumers deserve accurate information about the products they purchase and use. Inaccurate information furthers no legitimate safety interest and may be damaging. To further the important objective of maintaining the integrity and usefulness of any consumer product information published by the CPSC, World Kitchen provides the following comments to assist the staff in administering the public database required by Section 212 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").<sup>1</sup>

Specifically, World Kitchen sets forth below comments and suggestions on the following important issues: (A) verifying the accuracy of the information in the reports before they are posted; (B) allowing manufacturers or private labelers the opportunity to contact persons submitting reports; (C) establishing transparent and timely procedures to not post, retract, remove, or correct inaccurate information; and (D) making the statutorily required "no guarantee of accuracy, completeness or adequacy" disclaimer clear and conspicuous so that no person visiting the web site can miss it on any page viewed, downloaded, printed, or otherwise copied for further dissemination for any purpose.

## **II. COMMENTS AND SUGGESTIONS TO FACILITATE ACCURATE REPORTING OF PRODUCT INCIDENTS AND TO PREVENT THE PUBLICATION OF DAMAGING MISINFORMATION ON THE PUBLIC DATABASE**

### **A. The Accuracy of Information Contained in a Reported Incident of Harm Attributed to the Use of a Product Should Be Verified Before the Information Is Posted.**

According to the CPSC's September 2009 Report to Congress, posting product incident reports on the new public database "SaferProducts.gov" will meet two key objectives: (1) protect and inform the public and (2) improve the CPSC's ability to identify risks and respond quickly.<sup>2</sup> Both of these important objectives can be served and met only to the extent that the information made available on the web site is accurate. Section 212 requires that any report submitted for inclusion in the database include, at a minimum, (i) a description of the consumer product (or other product or substance regulated by the Commission) concerned; (ii) identification of the manufacturer or private labeler of the consumer product (or other product or substance regulated by the Commission); (iii) a description of the harm relating to the use of the consumer product (or other product or substance regulated by the Commission); (iv) contact information for the person submitting the report; and (v) a verification by the person submitting the information that the information submitted is true and accurate to the best of the

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<sup>1</sup> Section 212 of the CPSIA amended the Consumer Product Safety Act ("CPSA") to create a new Section 6A of the CPSA, titled "Publicly Available Consumer Product Safety Information Database." Citations to Section 212 requirements will refer to the relevant CPSA Section 6A provision.

<sup>2</sup> Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008, "Implementation of a Searchable Consumer Product Safety Incident Database, September 10, 2009 (hereafter referred to as "Report to Congress"), pp 3-4.

person's knowledge and that the person consents that such information be included in the database.<sup>3</sup> The CPSC is authorized to include additional information in the database that it determines to be in the public interest.

In its Report to Congress, the CPSC provides a screen mock-up of the planned incident report form, with data fields, including product type, manufacturer, product model, description of product, and description of harm caused, which the submitter must affirmatively fill in. Notably, however, the contemplated "verification" included on the mock-up appears to simply be a statement that requires no affirmative acknowledgment or confirmation of understanding and agreement by the submitter.<sup>4</sup> The lack of a requirement of affirmative acknowledgment and confirmation of the verification by the submitter is inconsistent with the statutory minimum of information required to post a reported incident, which states that a report must contain "a verification *by the person submitting the information* that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database."<sup>5</sup> We respectfully submit that the current verification and consent statement is legally insufficient to meet the minimum statutory requirements for posting a report. The form should be revised to require an affirmative acknowledgment of verification and consent by the submitter.

The CPSC's Report to Congress also notes that "[a]ll incident data submitted via SaferProducts.gov will be subject to CPSC review to verify its authenticity – that the submitters are who they say they are."<sup>6</sup> No process or procedure is identified, however, regarding what steps, if any, the staff will take to verify the accuracy of the contents of the report before posting it on the web site. To ensure that information posted on the web site is meaningful and accurate, World Kitchen suggests that the CPSC develop a transparent and consistent process for determining which reports should be posted and which ones should not. A report should not be posted unless the CPSC has verified its accuracy with confirmation of details and allegations of harm, as well as an opportunity for the CPSC staff to examine the product upon request to confirm product identity and to evaluate the reported incident. While limited resources may not permit the staff to verify the content of 100% of incident reports, it is important, at a minimum, to establish a consistent process for the staff to follow up on a significant percentage of the reports to verify content (and not just "authenticity" of the person submitting the report). This process would be akin to the type of quality-control processes and sampling routinely conducted by manufacturers to ensure product integrity and safety. This type of "quality-control" content verification process is essential to determine the accuracy or inaccuracy of submitted reports, to put submitters on notice that reports will be verified for accuracy, and to minimize the submission and posting of unhelpful and damaging misinformation on the web site.

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<sup>3</sup> CPSCA Section 6A(b)(2)(B)(i)-(v).

<sup>4</sup> The statement included at the bottom of the screen mock-up says, "I verify that this information is true and accurate to the best of my knowledge and that I consent to this information being included in the database." Report to Congress at p. 19.

<sup>5</sup> CPSCA Section 6A(b)(2)(B)(i)-(v) (emphasis supplied).

<sup>6</sup> Report to Congress at p. 6.

**B. Contact Information Should Be Shared With Manufacturers and Private Labelers to Permit Important Follow-Up, Including Confirmation of Product Identity and Examination of the Product for Any Possible Defect or Safety Issue.**

World Kitchen takes each complaint it receives seriously. As part of its quality-control process, World Kitchen follows up on any reported incident attributed to a World Kitchen product where the consumer alleges injury or property damage. As standard procedure in such instances, the company asks the consumer to return the product at no charge to the consumer. World Kitchen carefully inspects and evaluates each returned product to confirm product identity and to evaluate the product to determine if there is any quality, defect, or safety issue. As noted above, in many instances it turns out that the product, in fact, is that of another maker.

Section 212 specifies that the CPSC's incident database is to contain "reports of harm relating to the use of consumer products."<sup>7</sup> "Harm" is defined as (1) injury, illness, or death; or (2) risk of injury, illness, or death, as determined by the Commission."<sup>8</sup> These are precisely the types of reports that responsible manufacturers, including World Kitchen, follow up on to evaluate the reported incident and the product. Without consumer contact information, the company has no way to follow up on the reported incident to confirm the accuracy or inaccuracy of the report. Communication with the consumer reporting an incident relating to the use of the product is essential to allow important follow-up and evaluation of the product for any safety-related issue.

World Kitchen requests that consumers be encouraged by the Commission to make their contact information and product available to the manufacturer or private labeler. To the extent that the consumer declines to make this important information available, the report should contain a data field noting that the consumer declined to provide access to the product or to communicate with the manufacturer, and that the report is wholly unsubstantiated.

**C. Transparent and Timely Procedures Are Required to Prevent the Posting of Inaccurate Reports and to Promptly Retract, Remove, or Correct Inaccurate Information That Has Been Posted.**

Section 212 requires the Commission, to the extent practicable, to transmit each incident report it receives to the manufacturer or private labeler identified in the report within 5 days of its receipt by the Commission to allow review and comment.<sup>9</sup> The statute also says that the report is to be made available in the database not later than the 10th business day after the date on which the Commission transmits the report to the manufacturer or private labeler. This posting requirement explicitly contains an important exception that provides the Commission with authority not to post reports that contain materially inaccurate information.<sup>10</sup>

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<sup>7</sup> CPSA Section 6A(b)(1)(A).

<sup>8</sup> CPSA Section 6A(g)(1) and (2).

<sup>9</sup> CPSA Section 6A(c)(1).

<sup>10</sup> CPSA Section 6A(c)(3) (A) ("Except as provided in paragraph (4)(A) ["Inaccurate Information"]", if the Commission receives a report described in subsection (b)(1)(A), the Commission shall make the report available in

Like all manufacturers and private labelers subject to potentially inaccurate reports, World Kitchen is deeply concerned that transparent and timely procedures be put into place to ensure that unverified and inaccurate information is not arbitrarily posted, leaving the staff, manufacturers, and private labelers to sort out the truth later. Once inaccurate information is posted on the Internet, it is extremely difficult, if not impossible, to redact, correct, or retrieve it from the public domain.

In addition to explicitly exempting "inaccurate reports" from the "10th business day" posting requirement, the statute provides that if the Commission determines that information in a report or comment is materially inaccurate, the Commission shall (1) decline to add materially inaccurate information to the database, (2) correct materially inaccurate information in reports or comments added to the database, or (3) add information to correct inaccurate information in the database.<sup>11</sup> Further, if the Commission determines that information previously made available in the database is materially inaccurate or duplicative, it shall, not later than 7 business days after the determination, remove or correct the report, or add information to correct what is in the database.<sup>12</sup> These are essential protections to ensure the integrity and usefulness of information posted in the database.

To give effect to these important provisions in the statute, and to prevent unfair and potentially irreparable harm from inaccurate information, it will be imperative for the Commission to establish specific procedures for the expeditious evaluation and identification of materially inaccurate information in submitted reports, before they are posted. World Kitchen submits that the requisite process should include specific and transparent procedures for prompt review and evaluation by a dedicated staff that will apply fair and consistent criteria in evaluating accuracy or inaccuracy of submitted reports and comments alike. To the extent that the report contains potentially damaging inaccurate information, the Commission is well within its authority to decline to post it -- and should decline to post it -- until an appropriate determination is made.

While the statute does not define what types of information may be materially inaccurate, the plain meaning of the term "material" is information that is "important, more or less necessary; having influence or effect."<sup>13</sup> Since Congress specified the minimum information required for a report to be posted, it is reasonable to conclude that this essential information including the description of the product, identification of the manufacturer or private labeler, and description of the harm relating to the use of the product constitutes "material" information, which, if inaccurate, should not be posted, or should be redacted, or corrected if it has been posted. More specific examples of information that would be materially inaccurate include (1) an inaccurate description of the product; (2) an inaccurate assertion that the product caused harm, when, in fact, a different product was involved; (3) an inaccurate description of the reported harm (for example, the actual harm is different or there is an absence of actual harm); (4) an inaccurate assertion that the identified product caused the reported harm (in other words, the reported harm is unrelated to the use of the product); and (5) an inaccurate identification of

the database not later than the 10th business day after the date on which the Commission transmits the report under paragraph (1) of the subsection." (emphasis supplied).

<sup>11</sup> CPSA Section 6A(c)(4)(A).

<sup>12</sup> CPSA Section 6A(c)(4)(B).

<sup>13</sup> Black's Law Dictionary, 5th Ed. (West 1983).

the individual who experienced the reported harm (for example, there is no documentation or information to substantiate the reported harm, whether alleged personal injury or property damage).

We note that the Commission's responsibility with regard to materially inaccurate information is not limited to reports of harm and manufacturer's comments under Section 212. Under existing regulations governing information disclosure under Section 6(b) of the CPSA<sup>14</sup>, the Commission is required to take reasonable steps to ensure that the information it discloses about an identifiable product, brand, or company is (1) accurate, (2) fair, and (3) reasonably related to effectuated the purposes of the CPSA. The regulations require notice and comment and also provide a retraction procedure.<sup>15</sup> The provisions of 6(a) and (b) clearly apply to the disclosure of any information other than a report of harm described in Section 212.<sup>16</sup>

**D. The "No Guarantee of Accuracy, Completeness or Adequacy" Disclaimer Must Be Clear and Conspicuous and Should Be Sufficiently Prominent That No Person Visiting the Database Can Miss It on Any Page Viewed, Downloaded, Printed, or Otherwise Copied for Any Purpose.**

The Commission's Report to Congress describes its plan to launch "SaferProducts.gov" with a national multimedia public awareness campaign to garner attention. On one hand, the Commission says that the database (1) will help identify products to investigate, (2) will help determine when corrective actions will be taken, and (3) will give the public access to "the latest information on consumer product safety." On the other hand, Congress has recognized the dangers and limitations of inaccurate information made available through the web site. The law requires the Commission to provide "clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database."<sup>17</sup>

The required disclaimer must be plainly visible to all users of the web site to make clear that posted reports are unsubstantiated and may, in fact, contain inaccurate information. This is important not only for consumers but for any media entity, group, or authority that could misconstrue or misrepresent the nature or quality of the information – in some instances, damaging information about a product, brand, or company. World Kitchen submits that the required disclaimer should appear on every viewable screen or page so that it cannot be missed by any database visitor. To satisfy the notice requirement, the disclaimer should also appear on any page downloaded, printed, or otherwise copied for any purpose.

The database disclaimer is, in effect, an important cautionary statement to all database users. In the context of the CPSIA Section 105 requirements for cautionary statements mandated for toy and game advertisements, the Commission recently issued a rule on how to meet the

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<sup>14</sup> 16 CFR 1101.

<sup>15</sup> 16 CFR 1101.52.

<sup>16</sup> "The provisions of Section 6(a) and (b) shall not apply to the disclosure under this section of a report described in subsection (b)(1)(A) of this section." Section 6A(f)(1).

<sup>17</sup> CPSA Section 6A(b)(5).

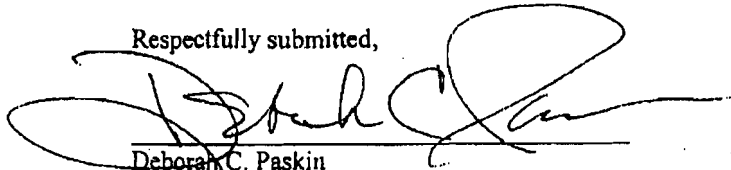
"conspicuous" requirement.<sup>18</sup> This guidance is specific and, World Kitchen suggests, instructive in the context of the Section 212 Public Database.

Specifically, Section 105 requires that the cautionary statement be prominently displayed in the primary language used in the messaging, in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in the messaging. Notably, the cautionary statement is required to appear on each page.<sup>19</sup>

### III. CONCLUSION

World Kitchen appreciates the opportunity to submit these comments on a matter of utmost concern to consumers, industry and the CPSC. World Kitchen welcomes the opportunity to work with the CPSC staff to address any questions or concerns the staff may have about its comments and is committed to working with the Commission to ensure the integrity and accuracy of information included in the public database. We thank the Commission for its consideration.

Respectfully submitted,



Deborah C. Paskin  
Chief Legal Officer  
World Kitchen, LLC  
5500 N. Pearl Street, Suite 400  
Rosemont, IL 60018

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<sup>18</sup> See Labeling Requirement for Toy and Game Advertisements; Final Rule, 73 Fed. Reg. 67730 (Nov. 17, 2008).

<sup>19</sup> *Id.*



**Stevenson, Todd**

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**From:** Campbell, Kerrie [KCampbell@manatt.com]  
**Sent:** Friday, January 29, 2010 1:47 PM  
**To:** Stevenson, Todd; Falvey, Cheryl  
**Subject:** CPSIA Section 212 Public Database: World Kitchen Comments  
**Attachments:** World Kitchen Comments on CPSIA Section 212 Public Database.pdf

Dear Mr. Stevenson and Ms. Falvey,

On behalf of World Kitchen, LLC ("World Kitchen"), we are filing the attached cover letter and World Kitchen Comments in response to the Commission's "Notice of Public Workshop on the Establishment of a Public Consumer Product Safety Incident Database; Request for Comments and Information," published in the *Federal Register* (December 22, 2009).

Consistent with standard procedure, we are also filing five (hard) copies separately by mail.

Please contact me if you have any questions or concerns about World Kitchen's Comments. Thank you for your attention to this matter.

Respectfully submitted,

Kerrie Campbell

Kerrie L. Campbell  
manatt | phelps | phillips  
700 12th Street, N.W., Suite 1100  
Washington, D.C. 20005  
(T) 202.585.6526  
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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010 <b>Received:</b> January 27, 2010 <b>Status:</b> Posted <b>Posted:</b> February 02, 2010 <b>Category:</b> Manufacturer <b>Tracking No.</b> 80a8a0cd <b>Comments Due:</b> January 29, 2010 <b>Submission Type:</b> E-Mail
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0013

Comments from Zippo Manufacturing Co.

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## Submitter Information

**Name:** Charles Duke

**Address:** United States,

**Submitter's Representative:** Walt Sanders, Van Fleet Associates, Inc.

**Organization:** Zippo Manufacturing Co.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0013.1:** Comments from Zippo Manufacturing Co.

2009-0112-0013

ZIPPO MANUFACTURING CO.  
33 BARBOUR STREET  
BRADFORD, PA 16701

PHONE: 814 368-2700  
FAX: 800 362-3598  
www.Zippo.com



January 27, 2010

**CHARLES JEFFREY DUKE**  
GENERAL COUNSEL AND  
CORPORATE SECRETARY

jduke@Zippo.com  
PHONE: 814 368-2797  
FAX: 814 363-2597

Todd A. Stevenson  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

RE: Public Workshop on Consumer Product Incident Database:  
"Materially Inaccurate Information"

Dear Todd,

These foregoing comments should supplement the record of the proceedings as part of the Public Workshop on Consumer Product Incident Database held on January 11 and 12, 2010.

Zippo Manufacturing Company is the maker of the world famous windproof lighter, and has other product lines including pocket knives, key holders, money clips, writing instruments, tape measures, and the new Multi-Purpose Lighter.

Today, Zippo has produced over 450 million windproof lighters since its founding in 1932. Except for improvements in the flint wheel and modifications in case finishes, the company's original design remains virtually unchanged today.

Zippo has expanded its sales operations nationally and internationally through a wide network of sales representatives. In more than 160 countries throughout the world, Zippo is synonymous with American made quality and craftsmanship.

Needless to say, Zippo is proud of its product and works hard to protect the integrity of its brand name. Regrettably, Zippo products have been copied and counterfeited by unscrupulous foreign manufacturers with lookalike and often substandard products. These cheap imitations fool many consumers into believing that they might have a genuine Zippo product; in reality, they possess a cheap imitation. Consequently, consumers will erroneously report that a fire, or similar injury, is "caused" by a Zippo product, when, in fact, it is the look alike product that does the damage. Consumers report these incidents to CPSC, leading the staff to believe that the product is manufactured by Zippo Manufacturing Company. Likewise, Zippo has had to defend product liability cases in many instances when, in fact, the product is not ours.

While the proposed product injury data base is *intended* to serve a defined public service by providing more information to consumers regarding potential harm of



defective consumer products, the submission of inaccurate information regarding a consumer product can create irrevocable harm to a company's reputation and the sales of its products. Moreover, inaccurate information submitted to the database about a product that poses no harm, could mislead and confuse consumers in their purchasing decisions. The disclaimer required by the CPSIA that "the CPSC does not guarantee the accuracy, completeness or adequacy of the contents of the contents of the database" does not obviate the fact that the inaccurate data will nonetheless appear on the website and be relied upon by the public.

This situation is particularly pernicious for a nationally known company like Zippo because Zippo's brand name is so common, it has become a household name for a flip top, refillable lighter. Because the procedures for filing an incident report on the database are simple and uncomplicated, the potential for posing inaccurate product information is increased. Such reports have the potential of (1) misidentifying the manufacture or product model, (2) creating incentives for competitors to file false reports to gain commercial advantage; (3) potential manipulation of the database to threaten the reputation of a company as leverage in a product liability lawsuit.

To avert these problems ZMC makes the following recommendations:

- The Commission should require any person submitting an incident report to the database to include a verification statement that the information they have submitted is accurate. Such a verification statement should include appropriate civil or criminal penalties for filing a false or inaccurate allegation or incident.
- The Commission should develop a transparent system of internal due diligence to verify the accuracy and validity of the information being submitted by consumers to the database, including a requirement that the manufacturer have the opportunity to examine the product in question and to compare the product with special markings normally placed on manufactured products of that company.
- The Commission should develop a transparent and efficient process for removing a report from the database when a manufacturer demonstrates that the information submitted is inaccurate or inaccurate. While Section 212(c) (3) provides for a mechanism for designating information as confidential, it does not provide a procedure to allow a manufacturer to request the Commission not to post the information on the database because it contains inaccurate information.



- The Commission should develop an "industry portal" with a mechanism for a manufacturer to specifically "red flag" information it believes to be proprietary or inaccurate, such as a lighter Zippo believes to be a counterfeit.
- The Commission should develop a transparent and efficient mechanism to remove promptly temporarily, any information from the database during the Commission staff's investigation to determine whether information on the database is indeed inaccurate.

Unless the inaccurate information is removed pending outcome of a staff determination, it is possible prolonged public exposure could damage the reputation of a company. If the Commission cannot remove the information on a temporary basis, the Commission should develop a transparent system of expeditious staff investigation.

Zippo Manufacturing Company prides itself on designing safety into its products and responding to product related problems expeditiously. For this reason, ZMC is not alone in expressing these concerns about the proposed database. Other similarly situated companies continue to face similar problems counterfeiting, look-alike products and product misidentification.

Thank you for taking our concerns into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Duke".

CHARLES JEFFREY DUKE  
General Counsel and Corporate Secretary  
Zippo Manufacturing Company

**Stevenson, Todd**

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**From:** Walt Sanders [wsanders@vmgthehill.com]  
**Sent:** Wednesday, January 27, 2010 11:53 AM  
**To:** CPSC-OS  
**Cc:** Jeff Duke  
**Subject:** Public Workshop on Consumer Product Incident Database: Materially Inaccurate Information  
**Attachments:** Zippo Comments on Consumer Product Incident Database (rev).pdf

Todd,

Attached are written comments from Zippo Manufacturing Company on the Public Workshop on Consumer Product Incident Database: Materially Inaccurate Information.

Could you please give an "best educated estimate" of when the Commission might issue a proposed rule?

Please let me know if you have any questions or require additional information.

Walt A. Sanders

Vice President Law & Government Affairs  
Van Fleet Associates, Inc.  
1800 Diagonal Road, Suite 490  
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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010 <b>Received:</b> January 29, 2010 <b>Status:</b> Posted <b>Posted:</b> February 02, 2010 <b>Category:</b> Trade Association <b>Tracking No.</b> 80a8a0e0 <b>Comments Due:</b> January 29, 2010 <b>Submission Type:</b> E-Mail
--

**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0014

Comments from Consumer Specialty Products Association

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## Submitter Information

**Name:** Jane Wishneff

**Address:** United States,

**Organization:** Consumer Specialty Products Association

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0014.1:** Comments from Consumer Specialty Products Association



January 29, 2010

Todd A. Stevenson  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, Maryland 20814

***Re: Consumer Product Safety Incident Database***

Dear Mr. Stevenson:

The Consumer Specialty Products Association (CSPA) supports the important mission of the Consumer Product Safety Commission (Commission) to protect the public from unreasonable risk of injury. We do, however, have serious concerns with the Commission's plans, as described in its September 10<sup>th</sup> Report to Congress, to implement the consumer product safety incident database as required under section 212 of the Consumer Product Safety Improvement Act (CPSIA). As currently constructed, CSPA fears that the incident database will fail to provide the Commission or the public with accurate and high quality data about the risks of consumer products.

CSPA is the premier trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of approximately \$80 billion annually in the U.S. of hundreds of familiar consumer products that help household, institutional and industrial customers create cleaner and healthier environments. Our products include disinfectants that kill germs in homes, hospitals and restaurants; candles, fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used everyday. Through its product stewardship program Product Care<sup>®</sup>, scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).

**Data Analysis and Reporting**

Due to CSPA's concerns regarding the validity of the data submitted for the consumer product incident database, we do not support the use of this data for scientific statistical analysis.



## **Reports of Harm (Incident Report Form)**

Neither the Commission's Report to Congress nor the Consumer Product Safety Act (CPSA) defines the scope of claims that will be allowed for inclusion in the incident database. CSPA recommends that the Commission do so. For instance, only those incidents that truly reflect the safety of a product should be published on the incident database. SaferProducts.gov should not be a portal for consumers to publish their dissatisfaction with a particular consumer product. Such opinion-based comments regarding a product's quality or effectiveness (versus its safety) should be considered outside the scope of the incident database and should be rejected for submission by the Commission. Allowing the database to become a "blog" of sorts for commentary about a product's quality or utility diminishes the real intent of the database, namely to inform consumers with *reports of harm* that are truthful, correct, and properly verified.

Additionally, claims that should be outside the scope of the incident database include those where the consumer clearly did not follow the product instructions on the label.

The Commission should not post reports that are incomplete. Incomplete reports omit the following information, which is mandated under §6A(b)(2)(B) of the CPSA:

- Description of the consumer product;
- Identification of the manufacturer or private labeler of the consumer product;
- Description of the harm relating to the use of the consumer product;
- Contact information for the person submitting the report; and
- Verification by the person submitting the information that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database.

Any submission omitting the above information should automatically be rejected by the Commission as an incomplete claim.

CSPA believes that there should be a time frame in which consumers can file claims concerning a particular incident (i.e., one year following the incident). Reports made after that time frame should automatically be rejected by the Commission. Additionally, the Commission should establish a timeframe for which reports will be included in the database. Information contained in the database for a period of one to two years most likely will be obsolete and of little value to consumers as manufacturers respond quickly and efficiently to reports of harm from the use of their products.

## **Manufacturer Notification and Response**

As the Commission's Report to Congress on the database indicates, the database is to be designed to "engage manufacturers, retailers, and distributors to ensure their full partnership in protecting consumers from dangerous products." CSPA agrees with the Commission that "manufacturers have a strong interest in verifying the accuracy of consumer complaints, protecting proprietary information and other trade secrets, and in rapidly responding to product incident reports." As the Commission considers manufacturer notification and response with

regards to reports of harm for inclusion into the database, CSPA offers the following recommendations:

- Notification by email, fax, or phone should be permitted according to the manufacturer or private labeler's preference;
- The Commission should create a system for allowing manufacturers to register the appropriate contact(s) within their organizations to receive notification of an incident report, and allow manufacturers to periodically check their registration for currency and be able to make any necessary changes easily and quickly;
- The Commission needs a clearly identified process with criteria to determine whether certain content is confidential business information (CBI); and
- The Commission should consider allowing a manufacturer to "flag" reports that it believes contains CBI. For instance, information about third party manufacturers is considered confidential and proprietary information by many manufacturers.

### **Materially Inaccurate information**

The CPSA does not require any direct confirmation by the Commission as to the accuracy of an alleged incident reported by a consumer. Consumers are only required to include verification "that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database." Unfortunately, the current mock-up of the webpage, as illustrated in the Commission's report to Congress, does not require a consumer to affirmatively include such a verification with his or her report, nor does it even require the consumer to actively agree or disagree with this verification. The Commission should require consumers to affirmatively include the verification statement in their narrative description of the incident, or at a minimum to affirmatively choose to agree or disagree with the verification statement.

Even more concerning, the Commission fails to explain or describe any procedures it will take to review and ensure the accuracy of the information submitted by consumers. Through the reporting requirements under §6(a)(2) of the CPSA, we have seen an overwhelming amount of incorrect, invalid and downright fraudulent incident information which must be carefully scrutinized before being posted to a public website and it would be useful to know what steps the Commission will take in ensuring the accuracy of information being posted to SaferProducts.gov. CSPA believes that a critical component of this program must include proper verification by the Commission of the accuracy and validity of the information being submitted to ensure that frivolous and mischievous reports are not made publicly available.

CSPA encourages the Commission to develop a clear, understandable definition of what constitutes "materially inaccurate information," as well as procedures for addressing materially inaccurate information in consumer reports and manufacturers' comments. CSPA believes certain information should be considered materially inaccurate because it misidentifies the product in question in the incident report. That information is identified below:

- Incorrect brand;
- Incorrect manufacturer or private labeler;

- Incorrect model;
- Incorrect product;
- Any information that is not directly related to the incident, such as unsubstantiated opinion statements about the product's design or general safety; and
- Reports of an injury or hazard caused by something other than the product identified in the report.

Additionally, there should be a transparent and streamlined process for removing a report from the site when a manufacturer can demonstrate that the underlying facts are inaccurate. Once a manufacturer has submitted a protest regarding a report, the Commission should have a limited time to render a decision or remove the report until it can render a decision. Any inaccuracy should be sufficient to warrant removal of the entire report until all other facts can be verified and a corrected report can be posted and consumers who knowingly make, use, or cause to be made or used, a false or misleading submission or statement should be subject to a fine.

Weeding out inaccurate reports benefits all parties involved – consumers, the Commission, and manufacturers – and enables the database to perform its fundamental function, namely to protect and inform the public with truthful, correct, and verified information pertaining to the safety of consumer products.

#### **Additional Database Content**

To ensure the accuracy of the information being submitted by consumers, CSPA recommends that in addition to the information required to be submitted by statute under §6A(b)(2)(B), the Commission also request the following information from submitters to substantiate their claims. Not only will this allow the Commission to better review and ensure the accuracy of incident claims, but it will enhance the quality of data ultimately available to consumers on SaferProducts.gov and help manufacturers follow-up on incident reports. Reports that do not include this information, however, should still be accepted as complete as long as it contains the mandatory information required under §6A(b)(2)(B) of the CPSA.

Examples of additional information that the Commission should require consumers to provide in reporting alleged incidents include:

- a. Information regarding the product involved in the incident, including the following:
  1. Product manufacturer as identified on product label or packaging;
  2. Type of product;
  3. Product brand;
  4. Model number or name;
  5. Serial number;
  6. UPC code;
  7. Date of purchase;
  8. Product code date (or equivalent designation on the product); and
  9. Place of purchase.

- b. Date of incident;
- c. Location of incident;
- d. Whether the manufacturer or private labeler was contacted prior to submission of the incident report;
- e. Verification that the label instructions were followed when using the product; and
- f. Brief description of the circumstances of the incident, including the following information:
  - 1. How the product was being used at the time of the reported incident;
  - 2. Description of what happened;
  - 3. Whether the consumer used any other products or devices along with the product involved in the incident;
  - 4. How much of the product was used over what period of time (if applicable);
  - 5. Description of harm incurred during incident;
  - 6. Describe types of symptoms and/or injuries that were sustained; and
  - 7. If the individual sought medical care indicate the type of medical care sought (i.e., clinic, hospital emergency department, private physician, Poison Control Center, hospital inpatient, none).

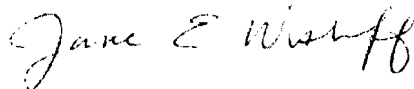
Further, to the greatest extent possible, the Commission should require that the submitter retain the product in question for at least one year. Retaining the product helps facilitate proper investigation by the Commission and the manufacturer.

From a design perspective, the submission form should include drop down menus to assist consumers in answering questions.

### **Conclusion**

Once again, we appreciate the Commission's solicitation of stakeholder comments on this very important issue and look forward to being involved in more discussions on this issue as it develops. If you have any questions regarding these comments, please do not hesitate to contact me at 202-833-7303 or [jwishneff@cspa.org](mailto:jwishneff@cspa.org).

Sincerely,



Jane E. Wishneff  
Regulatory Counsel & Director of International Affairs

## Stevenson, Todd

---

**From:** Jane Wishneff [jwishneff@cspa.org]  
**Sent:** Friday, January 29, 2010 1:52 PM  
**To:** CPSC-OS  
**Cc:** Brigid Klein; Jane Wishneff  
**Subject:** Consumer Product Safety Incident Database  
**Attachments:** 2010 CSPA Comments on Consumer Product Incident Database (Final).pdf

Mr. Stevenson –

Please find attached comments from the Consumer Specialty Products Association regarding the Consumer Product Safety Incident Database. Please do not hesitate to contact me if you have any questions.

Thanks,

Jane E. Wishneff  
Regulatory Counsel & Director of International Affairs  
Consumer Specialty Products Association  
900 17th Street, N.W., Suite 300  
Washington, D.C. 20006  
(202) 833-7303  
[jwishneff@cspa.org](mailto:jwishneff@cspa.org)

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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0015

Comments from Christine Hines

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## Submitter Information

**Name:** Christine Hines

**Address:** United States,

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## General Comment

See attached - Represents Consumers Union, Consumer Federation of America, Kids In Danger and Public Citizen

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## Attachments

**CPSC-2009-0112-0015.1:** Comments from Christine Hines

**\* Consumers Union \* Consumer Federation of America \*  
\* Kids in Danger \* Public Citizen \***

January 29, 2010

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Via [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

Re: Public Workshop on Consumer Product Incident Database

Comments of Consumers Union, Consumer Federation of America, Kids in Danger, and Public Citizen Regarding the Establishment of a Public Consumer Product Safety Incident Database Under Section 212 of the Consumer Product Safety Improvement Act of 2008

To whom it may concern:

Our groups, Consumers Union, Consumer Federation of America, Kids in Danger, and Public Citizen, welcome the opportunity to comment on the establishment and maintenance of a publicly available consumer product safety information database. Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA),<sup>1</sup> created a new section 6A of the Consumer Product Safety Act (CPSA)<sup>2</sup> to establish a searchable and accessible database through the Consumer Product Safety Commission (CPSC) web site. The database, if implemented properly, will enhance consumer protection against potential product hazards. It will lift a veil of ignorance and secrecy that often surround the release of critical product safety information. The database has the potential to ensure that such information is shared in a timely manner with the public to avert injuries associated with hazardous products.

In September 2009, the CPSC submitted a database plan to Congress<sup>3</sup> to satisfy requirements under the CPSIA.<sup>4</sup> Subsequently, the agency held a hearing<sup>5</sup> and a two-day workshop<sup>6</sup>

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<sup>1</sup> Pub. Law 110-314.

<sup>2</sup> 15 U.S.C. §§ 2051–2089, at § 2055a.

<sup>3</sup> Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008 Implementation of a Searchable Consumer Product Safety Incident Database (SaferProducts.gov), September 10, 2009.

to receive public comments covering five general areas: data analysis and reporting; reports of harm; manufacturer notification and response; materially inaccurate information; and additional database content. Our organizations testified at the hearing and participated in the workshop. The comments herein are in addition to those that we previously submitted and stated. Below are our additional observations and concerns related to the five subjects.

### **DATA ANALYSIS AND REPORTING**

- The public should be able to access all the information submitted to the database, except for consumers' private contact information. That is, all reports of harm and potential harm, the information derived by the Commission from voluntary and mandatory recall notices, and manufacturer or private labeler comments and responses to incident reports must be publicly available and accessible.
- For ease of use, the data should be made available in an easily searchable and downloadable format for members of the public who prefer to review and analyze the information all together, as well as in a format suitable for narrow, specific searches.
- The database should be searchable by general word entry, similar to mainstream Internet search engines, including advanced searches for data using search terms connected by both the words "AND" and "OR."
- The data should be searchable and sortable by type or category of product, such as crib, stroller, toaster, bath fixtures, and kitchen appliances. The data should also be searchable and sortable by brand name, model name, and model number, as well as type of injury and other harm, approximate date of purchase, and product manufacture information. All search results should be sortable by alphabet, date, and relevance.

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<sup>4</sup> 15 U.S.C. § 2055a(a)(2).

<sup>5</sup> 74 Fed. Reg. 54,552 (Oct. 22, 2009).

<sup>6</sup> 74 Fed. Reg. 68,055 (Dec. 22, 2009).



- Third-party analysis of data can be helpful for a number of reasons, including identifying previously unknown patterns or eliciting additional research questions related to potentially hazardous products. Data derived from incident reports, responses, and recall notices should be made available on the database so that third parties can assist the Commission in fulfilling its mission of protecting the public.
- The CPSC should evaluate current commercial software programs such as those developed by Intertek and Safety Research and Strategies that facilitate large database searches and result analysis. Intertek's software, a web-based software package that enables users to easily analyze product injury data is currently a part of the CPSC the National Electronic Injury Surveillance System (NEISS). The CPSC database should incorporate and be compatible with software that allows users to identify product-related injuries, to understand how they occur, to assess trends in ways that are critical to determining where changes are needed to save lives and prevent injuries, and to assess the impact of such changes. Such software should allow keyword searching, year-to-year comparisons, and trend analysis across all variables that NEISS tracks (injury type, body part, environment in which injury occurred, age, outcome). The software should allow all stakeholders to make smarter decisions about how to protect consumers and the public health.
- The CPSC should conduct detailed analyses of the data obtained through the database to help target the types of product-related changes needed for the greatest impact, such as consumer education, product design changes, and product quality improvements.
- The database should be able to provide a historical representation of injury data so that any user can easily determine the effectiveness of safety standards and regulations.

## **REPORTS OF HARM**

### *Transparency and usability*

- We urge the Commission to provide easy access to information about the database, including its purpose, its potential uses, and a guide on how to access information on the database.
- The Commission should include its contact information, such as an e-mail address and phone number, in plain sight for users who need assistance with the database. Help menus and pop-up screens will be valuable.
- The incident form should distinguish information that is required to be submitted under the statute (such as submitter name, product description and harm), from other helpful but optional information (such as a product's serial number).

*Timeliness of report publication to database*

- “[T]o the extent practicable,” the Commission must submit each report to the manufacturer/private labeler not later than five business days after receiving it. The Commission must publish each report to the database not later than the 10th business day after transmitting the report to the manufacturer or private labeler.<sup>7</sup> We urge the Commission to adhere to these deadlines. Delays will defeat the purpose of the database.
- The statute grants the Commission some flexibility in submitting the report to the manufacturer or private labeler. However, we urge the Commission to use its best effort to submit reports to the relevant company within five business days.
- The deadlines can and should be adhered to regardless of the means and form – web, telephone, paper – in which the report is received. The statute assigns the same deadlines regardless of reporting methods.
- The Commission should not apply a statute of limitations for consumer reports of incidents.

*Redundancies and repeat submitters*

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<sup>7</sup> 15 U.S.C. § 2055a(c)(1) and (c)(3)(A).

- At the workshop, participants discussed the possibility of multiple submissions of a single incident. The statute permits manufacturers and private labelers to review incident reports before they are posted to the database. In the rare event that a user repeatedly submits postings on the same incident, manufacturers and private labelers can alert the CPSC. In addition, the CPSC should remove duplicate entries before they are posted to the database.
- If additional postings of an incident contain supplemental information, the new information should be integrated into the original posting. Consumers may be unaware of how to update their postings, and may complete a new form to add information on a previously reported incident.

*Submitters' contact information*

- The incident report form should request that the submitter share his or her name, phone number and e-mail address (if available) to assist the CPSC in following up on the report or conducting an investigation.
- We urge the protection of consumers' private contact information. The CPSIA permits the Commission to provide consumers' contact information to the manufacturer or private labeler of the product only with the express written consent of the person who submitted the report of harm.<sup>8</sup> The Act bars manufacturers or private labelers from using or disseminating consumers' information to any other party for any purpose other than verifying a report of harm. In addition to individual privacy concerns, the prohibition is meant to prevent the harassment or intimidation of consumers or other reporters by regulated companies. The Commission should emphasize that misuse of consumers' private information will not be tolerated. The Commission should reiterate the restrictions and appropriate uses for consumer contact information in all forms sent to manufacturers. We urge CPSC to take any necessary action to punish violators. In addition, the

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<sup>8</sup> 15 U.S.C. § 2055a(b)(6).

option to provide manufacturers with submitters' contact information should be presented to submitters without bias, allowing them to make their own choices.

#### *Reporting forms*

- All forms of reporting – via online database, telephone, and paper – should be permitted and encouraged. Reporting should be as simple and easy for those lacking access to computers and Internet service as it is for others with those tools.

#### *Incident form design*

- The incident report form should have large, easy-to-read font and language on each page of the database. Lengthy, complicated, jargon-filled forms will only serve to discourage or intimidate users attempting to complete the incident report.
- The incident report form should include a box to allow for unlimited text so that the submitter may describe the incident and his or her experience with the product in full narrative form.
- The form should include other drop-down menus, word completion technology or some other means of facilitating the reporting and producing of information that is easy for the Commission and the public to process and use. The drop-down menus can include additional information for the user to submit on the incident, including: the product name, brand name, manufacturer name, model name or number, retailer information, and broad product categories; the nature of the individual's injury, if any; the age of the injured individual; and the final disposition of the injury (hospitalization or other medical treatment).
- The CPSIA requires that persons submitting the information must also include a "verification that the information submitted is true and accurate to the best of the person's knowledge and that such information be included in the database."<sup>9</sup> The verification should be included on the incident form in a clear and straightforward manner, such as a check in a box near to the online submit button.

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<sup>9</sup> 15 U.S.C. § 2055a(b)(2)(B)(v).

This format should suffice as a 'signature' that allows the information to be posted after the verification process is completed.

- Users who submit incident reports via telephone should be able to verify the truth and accuracy of their statements through the telephone conversation with Commission staff. While we suspect that incident reports in paper form will be significantly fewer in quantity than web or telephone submissions, we suggest that if a paper submitter also shares his or her phone number or e-mail address in the letter, Commission staff should be allowed to contact the submitter through a call and/or e-mail to obtain verification of his or her statements.
- The form should include a short, simple statement that informs users of the limited nature in which their contact information may be shared with and used by manufacturers and private labelers.<sup>10</sup>

#### *Product identity*

- Submitters should correctly identify the product with the best information available to them. Incident reports will be useless if the product cannot be identified. The Commission should allow and encourage the user to submit details such as model number or other product information. However, the Commission should not refuse incident reports that lack detailed information, as long as the product is accurately identified. Again, CPSC should integrate prompts and help menus to assist consumers.
- We agree with suggestions to add a software component on the incident form that permit submitters to upload photos of the products related to their incidents. These photos may allow for easier identification of the product at issue.

#### *Web site links*

- The incident form should contain links to outside web sites only if doing so will enhance the report's accuracy. Otherwise, we are concerned that these links may unnecessarily complicate the

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<sup>10</sup> 15 U.S.C. § 2055a(b)(6).

reporting process. We also urge the Commission to be particularly discriminating when linking to web sites other than federal, state, or local government web addresses.

#### *Incomplete forms*

- The CPSC should accept forms with incomplete information and seek to fill in the gaps through further research. As stated above, if the information is useful to the public in that it identifies a product or class of products and a potential harm, then the report should be posted and made available to the public.

### **MANUFACTURER NOTIFICATION AND RESPONSE**

- We urge the Commission to use electronic mail to notify manufacturers and private labelers because it is the most efficient, reliable mode of communication.
- We agree that a registry of contacts for manufacturers would be beneficial in efficiently carrying out the database's purpose.
- The CPSIA affords manufacturers and private labelers opportunity to respond to incident reports.<sup>11</sup> We recommend that the CPSC require that any response to an incident report also contain a verification of truth and accuracy by the representative who is submitting the response on the company's behalf (similar to the submitter's truth and accuracy statement).
- The CPSIA does not impose deadlines on manufacturer/private labeler responses and it appears that responses to reports on the database may be submitted at any time. The statute requires the agency to post the incident report 10 days after giving the manufacturer or private labeler notice of the report.<sup>12</sup> We urge the CPSC to adhere to this deadline, and refuse any request to delay the posting of valid incident reports onto the database while manufacturers and private labelers draft responses, conduct investigations, or other activities not specifically mandated under the database provisions. Delays will diminish the database's usefulness.

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<sup>11</sup> 15 U.S.C. § 2055a(c)(2).

<sup>12</sup> 15 U.S.C. § 2055a(c)(3)(A).

- The CPSIA states that the provisions of CPSA 6(b) secrecy provisions are inapplicable to the database. The Commission should reject any assertion that 6(b) applies.
- We remain concerned with the potential practice relating to the provision allowing for the removal of confidential business information.<sup>13</sup> We have stated previously that confidential matter is unlikely to be an issue for database submissions because information submitted by the public is by definition, not confidential. At the public workshop, an industry representative admitted that it would be rare for confidential business information to be submitted for the database. We agree. The only possible source of confidential business information would be the manufacturer or private labeler responses on the database. (Of course, once they are made, the statements no longer qualify as confidential). If somehow confidential business information is submitted for posting, manufacturers and private labelers must demonstrate confidentiality and submit supporting information to show that the information is entitled to confidential treatment.

### **MATERIALLY INACCURATE INFORMATION**

The database should contain accurate information. The integrity and utility of the database depend upon it. We urge the Commission to take the following steps when publishing information onto the database concerning “materially inaccurate” information:

- Ensure that the desire to verify the accuracy of all parts of a report does not result in delay in publication of the report.
- Ensure that the inaccuracies are, in fact, material before delaying the posting of a report. That is, the information should be important and would make a substantial impact if published on the database. The Commission should not delay the publication of incident reports on the basis of minor, superficial errors, particularly those that are not substantive.

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<sup>13</sup> 15 U.S.C. § 2055a(c)(2)(C).

- Ensure that the removal of certain material inaccurate information on the database does not result, if possible, in the removal of the entire report. The removal must be limited to the materially inaccurate information alone.
- If before a report's posting on the database, the Commission receives notice of materially inaccurate information in the report, the Commission should follow the statutory rules on how to treat the information, but it should not restart the 10-day statutory time period for posting the other information relative to the report on the database. In other words, if the 10-day time period will not be met with respect to the materially inaccurate information, the Commission should, to the extent possible, post all other information related to the report onto the database within the 10 days. Compliance with the statutory deadlines is imperative for building and maintaining a robust and useful public database.
- The party contending that a material inaccuracy exists in an incident report must adequately demonstrate to the Commission that the information is indeed materially inaccurate.
- The Commission should reject efforts to delay or deny the posting of information on the database based upon claims by manufacturers that a submitter's description of harm or causation is "materially inaccurate." Such assertions are based on the person's experience with the product and should be included.

#### **ADDITIONAL DATABASE CONTENT**

- We recommend that the database also link to other relevant CPSC content, including staff research.
- If the product that is subject to the entry has been recalled, the Commission should note it on the database, and link to the recall notice. Consumers should have access to the incident report and the recall information simultaneously.



- We agree with suggestions that search results should include recalls, closed investigations, and consumer complaints in a single search.

Respectfully submitted,

Christine Hines  
Consumer and Civil Justice Counsel  
Public Citizen

Rachel Weintraub  
Director of Product Safety and Senior Counsel  
Consumer Federation of America

Donald L. Mays  
Senior Director, Product Safety & Technical Policy  
Consumers Union

Ami Gadhia  
Policy Counsel  
Consumers Union

Nancy A. Cowles  
Executive Director  
Kids in Danger

**Stevenson, Todd**

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**From:** Christine Hines [chines@citizen.org]  
**Sent:** Friday, January 29, 2010 2:38 PM  
**To:** CPSC-OS  
**Subject:** Public Workshop on Consumer Product Incident Database  
**Attachments:** Database Wkshop Comments\_final.pdf

Attached are the comments of Consumers Union, Consumer Federation of America, Kids in Danger, and Public Citizen Regarding the Establishment of a Public Consumer Product Safety Incident Database Under Section 212 of the Consumer Product Safety Improvement Act of 2008.

Please let me know if there any questions or concerns.

Sincerely,

Christine Hines  
Consumer and Civil Justice Counsel  
Public Citizen's Congress Watch  
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Washington, D.C. 20003  
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# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0016

Comments from Kimberly-Clark Corp.

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## Submitter Information

**Name:** Charles Keely

**Address:** United States,

**Organization:** Kimberly-Clark Corp.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0016.1:** Comments from Kimberly-Clark Corp.



January 29, 2010

Office of the Secretary – via email [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)  
 Consumer Product Safety Commission  
 4330 East West Highway  
 Bethesda, Maryland 20814

Re: Comments regarding Section 212 of the Consumer Product Safety Improvement Act of 2008, Establishment of a Public Consumer Product Safety Incident Database.

Please allow this to serve as our response to the CPSC request for comments and information regarding Section 212 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") (Pub. Law 110-314), Establishment of a Public Consumer Product Safety Incident Database, announced at 74FR68053.

Kimberly-Clark manufactures a number of products used by consumers including well-known family care and personal care brands such as Kleenex®, Scott®, Huggies®, Pull-Ups®, Kotex® Poise®, and Depend®. We appreciate the opportunity to comment.

While recognizing that CPSC has posed specific questions for discussion during the workshops, we believe that these comments in many respects serve to both ensure ease of use for consumers while helping to ensure accuracy of information in the database. We similarly note that some responses may address more than one question posed during the five workshops.

Our comments are indented and follow the CPSC question as published in the workshop agenda.

#### **Workshop 1: Data Analysis and Reporting**

- Should the CPSC design the online incident reporting form to ensure the capture of data that can be used in scientific statistical analysis? If so, how?
  - We note that certain types of analysis are expected be challenging because underlying production volumes may not be known to all parties conducting analysis.
- What can the CPSC do, from a system design perspective, to ensure the accuracy of submitted data?
  - We recommend the use of "smart" pull-down menus to accurately link a manufacturer to a brand and vice versa. This approach is expected to yield higher quality data for investigation purposes.
  - Unique identification should be assigned to individual reports. Two types of unique identification may be necessary for a report; one type viewable to the public database, a second type viewable only to report makers, manufacturers or private labelers and CPSC that is used to collect further information regarding the report.
- What can the CPSC do, from a system design perspective, to ensure the ongoing and perpetual integrity of submitted data?

- CPSC should publish information and seek comments with regard to the status of reports including closure, retention time, archiving approach, or made obsolete. We observe that obsolete information may not be useful to consumers. Report status has the potential to be system-driven and could be based what events have occurred with regard to a particular report, e.g. notification, type of comments, etc.
- What data sets, including information from reports of harm and mandatory and voluntary recall notices, should be made available for public search and reporting? Why?
  - Individual identity and contact information should be limited to CPSC and manufacturer access, and not disclosed without report maker or manufacturer's consent.
  - General information regarding recalls should be provided separate from reports of harm. It is common that recalls have limited scope, and there is notable risk that reports of harm could be inappropriately or inaccurately linked to recall information.

## **Workshop 2: Reports of Harm**

- How should the CPSC design the incident report form so that it is clear and easy for users to complete?
  - Pre-defined values and/or data types using pull-down menus are expected to reduce potential for errors.
- From a design perspective, how should the CPSC deal with incomplete reports of harm?
  - We believe the database should be designed to accommodate and align with reports of, thresholds for and verification of harm. CPSC should provide guidance and information that clarifies the types of reports it intends to include in the database, and the basis upon which those reports are included. Similarly, it may be useful to have examples of reports which CPSC would exclude. We refer to links at FDA and EPA provided below which help to clarify the type of information expected in those reports. We urge CPSC to develop similar information to encourage complete reports.
  - We note that the FDA and the EPA have published documents with regard to adverse event reporting. These may be useful references to develop the approach to the database.
    - Reporting Serious Problems to FDA -  
<http://www.fda.gov/Safety/MedWatch/HowToReport/default.htm>
    - EPA Pesticide Adverse Event Reporting -  
[http://www.epa.gov/PR\\_Notices/pr98-3.pdf](http://www.epa.gov/PR_Notices/pr98-3.pdf)
  - Please see our comments below regarding collection of product identity information, which could be incorporated into how to fill out an incident report form.
- Should the incident report form check for inaccurate information? How?
  - Smart menus noted earlier have a role in checking for inaccuracies
  - Email addresses should be validated for proper format and against illegitimate use.
  - Database field validation should be considered to promote accuracy of data, e.g. system check for blank fields, system check to ensure a numeric field only accepts number, etc.
- What, if any, instruction to users should be included on the incident reporting form?

- CPSC should develop complete instructions including examples as well as other tools for incident reporting, and consider providing 'help text' in-line with the form fields to assist the end-user when completing the form.
- What, if any, disclaimers or qualifications should appear on the incident report form?
  - We recommend that the CPSC include a statement on each report that there is no verification of the truth or accuracy of the information provided to the CPSC in an incident report.
- Should any category of persons be excluded from submitting reports of harm for inclusion in the public database, and, if so, by what means?
  - We note that third party report makers may be one or more degrees separated from the events involved with a report. Verification processes and source of the report may have a stronger role in these situations, and we encourage CPSC to consider how this may affect assessment of information which could be materially inaccurate. We believe transparency with regard to relationships surrounding reports and their makers is useful to investigations.
- What should a description of the consumer product entail and why?
  - We encourage CPSC to direct report makers to examine product and packaging for coding or other identification information which is commonly found near "800" number information. This information can be used to specifically identify a product. Further, we believe users should be encouraged to use manufacturer's customer service (such as "800" numbers) if available as an initial approach for reporting a concern about a product and/or obtain information about the product. Generally, this would put them in contact with manufacturer's personnel who can help identify products and/or take reports.
  - We encourage collection of manufacturer/distributor/private labeler name, brand, product name, Universal Product Code and lot, cohort, or manufacturing date information.
- What means can the CPSC employ to ensure that the correct manufacturer and/or private labeler are identified in a report of harm?
  - Smart menus noted earlier have a role in checking for inaccuracies.
- How should the incident report form address the submitter's verification of the information submitted?
  - Report makers should be required to verify the accuracy of a report. We recommend a straight-forward approach, yet more rigor than a common "click the checkbox" function. This feature should additionally alert and describe the merit of the verification. The feature should describe implications for submitting fraudulent, inaccurate or misleading information.
- How should the incident report form address the submitter's consent for: (i) inclusion in the public database; and (ii) release of contact information to the manufacturer or private labeler? Are there any other issues related to the user's consent that the CPSC should consider?
  - Report makers should be required to consent to database inclusion and to whom they release their information. We recommend a straight-forward approach yet more rigor than a common "click the checkbox" function. This feature should additionally alert the report maker while describing the implications of consent.

### **Workshop 3: Manufacturer Notification and Response**

- What means should the CPSC employ to notify manufacturers and private labelers regarding a report of harm within the five day statutory time frame?
  - Electronic notification is anticipated to be an effective mechanism for this process.
  - A secured / encrypted method of communication should be considered.
  - Unique features should be included in notifications to facilitate development of triggers for further alert, i.e. a notification from CPSC should be uniquely identified so that a notified party can trigger a specified email distribution.
- Given the statutory timeframe for notification, should manufacturers and private labelers be able to “register” contact information with the Commission for the purposes of notification of a report of harm? Please explain your reasoning. What form of contact information should be acceptable, i.e., electronic mail only? What other issues should the CPSC consider?
  - Registration is expected to facilitate electronic notification. Users should be able to manage aspects of registration through secure access. We recommend a pilot of the system to work through its features and functionality.
- What means should the CPSC employ to allow manufacturers and private labelers to submit comments regarding a report of harm or to designate confidential information? What issues should the CPSC take into consideration when developing such process?
  - CPSC should ensure that only the applicable manufacturer or private labeler can submit comments regarding a report. Electronic means are expected to facilitate making comments.
  - Unique identification information associated with a report should be required to offer comments. This second level of unique report identification information should only be available to report makers, manufacturers or private labelers and CPSC. Different types of users, e.g. registrants, CPSC, report makers, and other users, could have different “views” of data.
  - The database should provide a mechanism for designation of confidential information, redacting and exchanging redacted versions of reports.

### **Workshop 4: Additional Database Content**

- What, if any, information cannot be included in the public database pursuant to the statute and why?
  - We note that CPSC has acknowledged the scope of its authority with regard to otherwise regulated products. Many consumer products are regulated by agencies other than CPSC including but not limited to the FDA or the EPA. Many of these products fall outside of the scope of CPSC regulatory authority, many are subject to their own reporting mechanisms, and should not be included in the database.
  - We believe information in the database should align with reports of and thresholds for harm. CPSC should provide guidance and information that clarifies the types of reports it intends to include in the database, and the basis upon which those reports are included. Similarly, it may be useful to have examples of reports which CPSC would exclude.
  - During the workshops, there was broad discussion surrounding the potential for the database to become a “blog”. We do not view the database to have or serve in this type of role, nor should it be a forum for proposing or forwarding agendas.

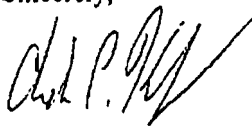
### **Workshop 5: Materially Inaccurate Information**

- What, if any, measures should the CPSC employ to prevent the submission of fraudulent reports of harm while not discouraging the submission of valid reports?
  - Report makers should be required to verify the accuracy of a report. We recommend a straight-forward approach, yet more rigor than a common “click the checkbox” function. This feature should additionally alert and describe the merit of the verification. The feature should describe implications for submitting fraudulent, inaccurate or misleading information.
- How should the CPSC allow a submitter or others to claim that a manufacturer has submitted materially false information?
  - Unique identification information associated with a report should be required to offer comments.
- What specific disclaimers should the CPSC make with regard to the accuracy of the information contained in the public database and why? Where should such disclaimers appear and why?
  - We recommend that the CPSC include a statement on each report that there is no verification of the truth or accuracy of the information provided to the CPSC in an incident report. This information serves to notify users of the nature of information in the database.

Other Federal agencies have published guidance documents as a useful facet of an overall approach to achieve compliance. We encourage CPSC to consider and continue to use this approach to help industry comply with CPSIA.

Finally, we encourage CPSC to exercise its regulatory discretion with regard to implementation and enforcement of CPSIA. We continue to be engaged in activities sponsored by CPSC regarding the Act.

Sincerely,



Charles C. Keely  
Regulatory Technical Leader  
Kimberly-Clark Corporation  
Global Regulatory Affairs



# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0017

Comments from BSH Home Appliances Corp.

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## Submitter Information

**Name:** Marty Walsh

**Address:** United States,

**Organization:** BSH Home Appliances Corp.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0017.1:** Comments from BSH Home Appliances Corp.

January 29, 2009

By E-Mail to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West highway  
Bethesda, MD 20814

Re: Public Workshop on Consumer Product Incident Database (Data Analysis and Reporting; Reports of harm; Manufacturer Notification and Response; Materially Inaccurate Information; and Additional Database Content)

Dear Mr. Stevenson:

Enclosed are the comments of the BSH Home Appliances Corporation regarding the consumer product incident database. BSH has many concerns about the implementation and population of the database. Those listed below are only the major concerns regarding the overall implementation.

#### Reports of Harm

CPSA §§ 6A(b)(1)(A)(i)-(v) lists those who may submit reports of harm for inclusion on the public incident database: (i) consumers; (ii) local, State, or Federal government agencies; (iii) health care professionals; (iv) child service providers; and (v) public safety entities. Only reports from those reporters should be considered for inclusion in the database and the Commission should clearly and narrowly define these categories of reporters. Furthermore, only reports of actual or reasonably foreseeable harm should be included. Many of the reports presently forwarded to BSH by the Commission relate to quality, cost or service issues not related to harm or a hazard. The prescribed timing to post the reports will require considerable numbers of trained staff to properly process the reports.

The incident report form should contain instructions aimed at guiding consumers to submit the most complete, accurate, and useful information possible. When submitted online, the report form should notify reporters when required fields (i.e., those that seek Required Information) are left blank. Furthermore, the instructions should inform consumers as to the importance of submitting full and complete information on the product at issue. Similarly, so that manufacturers and private labelers can verify reports and help ensure the accuracy of the database, the instructions should inform the reporter of the benefits of allowing the manufacturer to contact them in order to verify the incident report.

#### Manufacturer Notification and Response

The statutory time frames involved in manufacturer notification and response are tight and will be very difficult for the Commission to meet. Furthermore, it will be even more

difficult for a manufacturer to provide adequate written comments before the report is posted in the database and such comments may often be critical to the integrity and accuracy of the information contained in the database. Accordingly, it is critical that the proper person at the manufacturer receive the report in a timely fashion. BSH Home Appliances Corporation is one of a family of companies with common ownership and similar names. Presently, it is not unusual for a report to be sent to the wrong company. With the extremely short response times prescribed in the new law, it is critical that the proper person at the right manufacturer receive the report when it is first sent and that the notice include a provision for an unintended recipient to notify the Commission immediately that the report was sent to the wrong addressee.

#### Materially Inaccurate Information

The Commission should have clear procedures for addressing claims of materially inaccurate information in reports of harm and manufacturer comments. CPSA § 6A(c)(4) specifically outlines the Commission's obligations regarding materially inaccurate information both before and after such information has been made available in the public database. At a minimum, the Commission must follow those procedures.

Upon a claim that a report of harm or a corresponding comment contains materially inaccurate information, the Commission must make a determination as to the accuracy of the report or comment. CPSA § 6A(c)(4). The Commission should not post the report until that determination is made. That obligation falls solely on the Commission where the person filing the report chooses not to identify themselves to the manufacturer. In those cases, when a material piece of information is in question, it is incumbent on the Commission to establish the accuracy of the information.

It is obvious in reading consumer reports of incidents that observers with different levels of acuity, different levels of technological background, different background experiences, different vantage points, etc. will report differently on the same incident. Accordingly, the CPSC must provide clear and conspicuous notice to database users that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database. That notice should appear on every page of every report (including printed copies).

BSH looks forward to further interaction with the Commission regarding the implementation of this very important tool.

Best regards,

Marty Walsh  
Product Safety - BSH Home Appliances Corporation  
P - 818-981-1228 F - 714-230 - 2156  
marty.walsh@bshg.com

**Stevenson, Todd**

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**From:** Walsh, Marty (CS/PS) [marty.walsh@BSHG.COM]  
**Sent:** Thursday, January 28, 2010 5:03 PM  
**To:** CPSC-OS  
**Subject:** Public Workshop on Consumer Product Incident Database  
**Attachments:** January 29 Database comments.doc

Dear Mr. Stevenson:

Attached please find the comments of BSH Home Appliances Corporation regarding the Public Workshop on Consumer Product Incident Database (Data Analysis and Reporting; Reports of Harm; Manufacturer Notification and Response; and Additional Database Content).

<<January 29 Database comments.doc>>

Thank you for your consideration,

Best regards,

Marty Walsh  
Product Safety  
BSH Home Appliances Corporation  
Voice 818-981-1228  
Fax 714-230-2156

# PUBLIC SUBMISSION

<b>As of:</b> February 02, 2010
<b>Received:</b> January 29, 2010
<b>Status:</b> Posted
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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0018

Comments from the Association of Home Appliance Manufacturers

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## Submitter Information

**Name:** Wayne Morris

**Address:** United States,

**Organization:** Association of Home Appliance Manufacturers (AHAM)

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0018.1:** Comments from the Association of Home Appliance Manufacturers



1111 19th Street NW • Suite 402 • Washington, DC 20036  
 202.872.5955 202.872.9354 www.aham.org

January 29, 2009

By E-Mail to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

Office of the Secretary  
 Consumer Product Safety Commission  
 4330 East West highway  
 Bethesda, MD 20814

Re: Public Workshop on Consumer Product Incident Database (Data Analysis and Reporting; Reports of harm; Manufacturer Notification and Response; Materially Inaccurate Information; and Additional Database Content)

Dear Mr. Stevenson:

Enclosed are the comments of the Association of Home Appliance Manufacturers (AHAM) regarding the consumer product incident database. When implementing CPSA § 6A, AHAM urges the Commission to closely follow the statute's requirements. It is also critical that the public database be as accurate as possible, and AHAM urges the Commission to make the accuracy and integrity of the database an overriding consideration when it engages in rulemaking to implement CPSA § 6A.

#### **I. Data Analysis and Reporting**

The Consumer Product Safety Improvement Act (CPSIA) created a new section, 6A, of the Consumer Product Safety Act (CPSA) requiring the Commission to establish and maintain a database on the safety of consumer products, and other products or substances regulated by the Commission. The database must be publicly available, searchable, and accessible via the Commission's website. CPSA § 6A(a)(1). AHAM urges the Commission to design the database in a way that follows the requirements of CPSA § 6A. The Commission should provide what the statute requires, and only what the statute requires, in as simple and accurate a format as possible.

##### **A. The Database Must Be Designed To Ensure Integrity And Accuracy**

It is critical that the Commission design the consumer incident database in a way that ensures its ongoing integrity and accuracy. In order to achieve such integrity and accuracy, AHAM urges the Commission to align the incident report and the manufacturer's response such that the manufacturer's comments appear in the same field as the consumer's comments. This will ensure that database users have the most complete information possible. To the same end, incident reports should be posted simultaneously with manufacturer comments.

From a system design perspective, the Commission should employ methods to ensure that the integrity and the accuracy of the database continues beyond the consumer's initial viewing of incident reports. For example, the Commission should make data available to the public in a .pdf format or other format that is not capable of manipulation. In addition, CPSIA § 6A(b)(5) requires that the CPSC provide clear and conspicuous notice to database users that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database. That notice should appear on every page of every report (including printed copies). Similarly, printed pages should bear a print date in order to reduce confusion between versions of reports or manufacturer comments that could arise if reports are corrected after they are initially posted.

**B. The Database Should Be Designed Simply To Optimize Consumer Use**

The database is meant to be a consumer resource, and the Commission should keep that in mind as it determines what types of data sets to make available and how to present those data sets. If the Commission decides to provide raw data to consumers, it should do so only if it accompanies the data with a disclaimer. Furthermore, the Commission need not, and should not, facilitate third-party organizations in analyzing preliminary data. The database is for *consumer* use; it is not designed to facilitate statistical analysis by third-party organizations.

**II. Reports of Harm**

**A. The Statute Identifies Proper Reporters**

CPSA §§ 6A(b)(1)(A)(i)-(v) lists those who may submit reports of harm for inclusion on the public incident database: (i) consumers; (ii) local, State, or Federal government agencies; (iii) health care professionals; (iv) child service providers; and (v) public safety entities. The report form should ask reporters to identify to which group they belong. Only reports from those reporters who fall under one of the permissible categories can be considered for inclusion in the database. And the Commission should clearly and narrowly define these categories of reporters.

Furthermore, in order to ensure the database's integrity and accuracy, the Commission should have a method for verifying that those making incident reports are who they say they are, and that reports are not made by competitors, interest groups, or others motivated to "salt" the database. Manufacturer follow-up on reports is the best way to verify the identity of those who submit reports, but manufacturers are only in a position to make this determination if they have the consumer's contact information. Accordingly, the Commission should urge reporters to consent to their contact information being shared with the manufacturer or private labeler identified in the report.

**B. The Statute Identifies Required Information**

CPSA §§ 6A(b)(1)(B)(i)-(v) identifies the minimum information that must be included in a report of harm submitted by a person or entity listed in CPSA §§ 6A(b)(1)(A)(i)-(v) in order for that report to be included on the publicly available database: (i) a description of the consumer

product (or other product or substance regulated by the Commission) concerned; (ii) identification of the manufacturer or private labeler of the consumer product (or other product or substance regulated by the Commission); (iii) a description of the harm relating to the use of the consumer product (or other product or substance regulated by the Commission); (iv) contact information for the person submitting the report; and (v) a verification by the person submitting the information that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database (collectively "Required Information"). Thus, in order for a report of harm to be included in the database, it must contain all of the Required Information and be submitted by one of the entities listed in §§ 6A(b)(1)(A)(i)-(v), as discussed above. Reports that do not contain all of this information are incomplete for purposes of the database. While the Commission may (and should) follow-up on those reports per its already existing procedures for consumer reports of harm, incomplete reports of harm cannot be posted on the database or used in data compilations.

Comments about product quality are not equivalent to reports of harm. And only reports of harm can be included in the database. *See* CPSA § 6A(b)(1)(A). The statute defines harm as meaning "injury, illness, or death" or "risk of injury, illness, or death, as determined by the Commission." Thus, the Commission must distinguish between reports that identify product quality or general safety issues and those that actually report harm or risk of harm. Only the latter can be included in the database.

i. *Description Of A Consumer Product*

The description of a consumer product should include the following information in order to aid in identifying the product at issue and verifying that the manufacturer identified in fact manufactures the product. This information will also help the Commission and/or the manufacturer or private labeler investigate the incident reported:

- Brand
- Product Name
- Type of product
- Model number or model name (whichever is applicable)
- Serial number (if available)
- Product description
- Product age

AHAM does not suggest, however, that *all* of this information be required in order for the reporter to have submitted a "description of a consumer product" as required by the statute for the report to be included in the database. For purposes of considering the "description of the consumer product" requirement satisfied, it is likely enough that the reporter identifies the type of product (for example "toaster"). Reporters will always know that information.

ii. *Contact Information*

The statute requires the reporter to submit his or her contact information in order for the report to be considered complete for purposes of being included in the database. To meet the statutory requirement for inclusion in the database, AHAM suggests the reporter be required to



list his or her name and address. In addition, when submitted online, AHAM suggests that the reporter also be required (or at least asked) to submit his or her email address, and when the report is submitted via telephone, the reporter also be required (or at least asked) to provide his or her telephone number. Regardless of the method of submission, reporters should be encouraged to submit his or her phone number and/or e-mail address (in addition to the required name and address), as that information is critical to aid the Commission and/or manufacturer in verifying the report within the statutory timeframe. We also note that if a report is made on behalf of a minor, the information should be provided for the parent or guardian of that minor.

The incident report form should encourage reporters to consent to the release of their contact information to the manufacturer or private labeler because doing so will allow the manufacturer or private labeler to effectively verify the report. It is critical to overall consumer safety that manufacturers verify consumer reports of harm, as they currently do in normal course, by investigating the cause of the incident when possible. The report form should also notify the consumer that the manufacturer or private labeler can only use the contact information for the purpose of such verification (e.g., not for advertising). Manufacturers should, however, be permitted (and encouraged) to follow-up on any questions, concerns, or requests the consumer raises when the manufacturer makes the initial verification contact.

### iii. *Reporter Verification And Consent*

The statute requires the reporter to verify that the information submitted is true and accurate to the best of the person's knowledge and that the person consents to the information being included in the database. See CPSA § 6A(b)(1)(B)(v). Without this verification and consent, the report is incomplete and cannot be included in the database. Because the verification and consent address two separate topics, they should be obtained separately (e.g., there should be two questions on the form or subsequent verification sheet).

We understand that the Commission currently handles consumer reports of harm by obtaining an address and mailing a report form which the consumer must then mail back. AHAM suggests that the Commission employ a similar procedure for obtaining verification and consent for purposes of the database. For example, the Commission should consider sending an automated verification message to the e-mail address submitted by the reporter when the report is submitted online. The verification message should allow the reporter to review his or her report and require the reporter to respond to the message in order to verify the report and consent to it being included in the database. When reports are submitted by phone or mail, the Commission should send a letter stating that the report has been received, should provide the report to the reporter, and request verification and consent. The statutory timeframes for the Commission to notify the manufacturer and post the report on the database can start only when the verification and consent are received. These procedures will help ensure that reporters are who they say they are, and will guard against fraudulent reports and reports that are not submitted by individuals. It will also increase the quality and veracity of the submitted reports.

If the Commission does not decide to require the reporter to provide this type of follow-up verification and consent, it should seek the verification and consent on the incident report form. The reporter should be required to check a box or perform some other specific action

rather than being assumed to have verified the report or consented to its inclusion on the database merely through the act of submitting the report.

C.     **The Report Of Harm Should Seek Limited  
          Additional Information From Reporters**

The Required Information is the minimum information required for a complete report. The Commission can also request additional information on the incident report form. AHAM suggests that the Commission seek limited information in addition to the Required Information in order to help the Commission and/or manufacturers verify and follow-up on the report:

- Model number or name (this should be on a different line or field than the manufacturer or private labeler in order to minimize confusion);
- Serial number (if available);
- UPC Code (if available);
- Date code (if available);
- Description of the injury/property damage and whether professional medical attention was sought (why or why not);
- Place of purchase;
- Date of purchase;
- An inquiry as to whether the manufacturer or private labeler was contacted prior to the submission of the report (this may help the manufacturer or private labeler locate the report in its own database);
- Whether the product is available for investigation;
- Whether any other product or device was being used when the incident occurred (e.g., extension cord, adapter);
- How the product was installed (if applicable).

Reports that do not include this information, however, should still be accepted as complete reports eligible for inclusion on the database (assuming they come from a listed reporter and contain all of the Required Information).

D.     **The Report Of Harm Should Be Designed  
          To Facilitate Complete And Accurate Reports**

Because the statute requires a minimum level of information in order for a report of harm to be included on the database, the Commission should design the incident report form to ensure that Required Information is captured. For example, the Commission should use yes or no questions, drop down boxes, check boxes, and other fixed response options where appropriate. In addition, when the statute requires a description, it may be useful to allow short narrative responses. Similarly, the instructions on the form should tell the consumer what information is required to make a complete report eligible for inclusion on the database (i.e., Required Information).

The incident report form should contain instructions aimed at guiding consumers to submit the most complete, accurate, and useful information possible. When submitted online,

the report form should notify reporters when required fields (i.e., those that seek Required Information) are left blank. Furthermore, the instructions should inform consumers as to the importance of submitting full and complete information on the product at issue. Similarly, so that manufacturers and private labelers can verify reports and help ensure the accuracy of the database, the instructions should inform the reporter of the benefits of allowing the manufacturer to contact them in order to verify the incident report.

**E. Reports Not Submitted Online Require Some Special Consideration**

AHAM believes that all reports of harm submitted for inclusion in the database, regardless of the method of submission, are subject to the same statutory requirements and timeframes. Reports submitted by telephone, however, require some special consideration with regard to obtaining the reporter's verification and consent, which AHAM believes should be received in writing. When the Commission receives a report via telephone, the Commission should send the submitter (via mail, email, or fax) the written report that will be transmitted to the manufacturer or private labeler and request verification. Only upon receipt of that verification can the statutory timeframe begin. The same is true when the Commission receives a report via mail that does not contain the required verification and/or consent.

**III. Manufacturer Notification And Response**

Under the statute, the Commission is required, no later than five business days after receiving a report from a listed reporter containing all of the Required Information, to the extent practicable to transmit the report to the manufacturer or private labeler identified in the report. CPSA § 6A(c). And manufacturers or private labelers who receive such a report have the opportunity to submit comments to the Commission on the information contained in the report and to request that those comments be included in the database. CPSA § 6A(c)(2). Within ten days of transmitting the report to the manufacturer, the Commission must make the report available in the database. CPSA § 6A(c)(3).

**A. The Commission Should Establish A Registration System**

The statutory timeframes involved in manufacturer notification and response are tight and will be difficult for the Commission to meet. Furthermore, it will be difficult for manufacturers and private labelers to provide written comments before the report is posted in the database. And such comments may often be critical to the integrity and accuracy of the information contained in the database. Accordingly, it is critical that the proper person or people at the manufacturer or private labeler receive the report. It will be incredibly complex for the Commission to identify which manufacturer should receive a report in light of the fact that many manufacturers manufacture more than one brand and many brands are manufactured by more than one manufacturer.

The best way for the Commission to notify the proper person at the company is to allow manufacturers and private labelers to register contact information with the Commission. Manufacturers and private labelers should be able to provide as much contact information as is necessary to reach the proper person or people at the company. Notification by e-mail, fax, mail,

and/or phone should be permitted per the manufacturer or private labeler's designated preference(s). Furthermore, notifications should be capable of going to all designated people at a company at one time. Generic mailboxes should also be permitted (e.g., CPSCreports@company.com).

If the Commission develops a registration system, it should consider what, if anything, it will do when an e-mail bounces back or mail is returned to sender. It should also consider methods for verifying that registrants are who they say they are. For example, the Commission should send each company that registers a contact(s) person a confirmation email or letter confirming that the people registered are in fact authorized contacts at that company (at the outset and each time the contact information is updated).

B. The Commission Should Establish A Means For  
Submitting Comments And Designating Confidential Information

The initial incident report and the manufacturer's response to that report should be aligned in the database. In other words, the manufacturer's comments should appear in the same field as the consumer's comments. Thus, the Commission should have a means for manufacturers and private labelers to submit comments to be posted in the database that allows the comments to be posted in the database alongside the report.

A manufacturer or private labeler should be able to designate information that it believes is materially inaccurate or confidential via a clear method. One example is a flag system that allows the manufacturer or private labeler to flag reports that may contain materially inaccurate or confidential information.

CPSA § 6A(c)(2)(C) specifically requires the Commission to withhold confidential information at the manufacturer's or private labeler's request if it determines that the information is indeed confidential. Thus, if after review, the Commission determines that a report contains confidential information, it *must* redact that information from the report of harm, and it must not post the report in the database until it makes a determination as to the confidentiality. CPSA § 6A(c)(2)(C)(ii). If the Commission determines that the information is not confidential, it must notify the manufacturer. CPSA § 6A(c)(2)(C)(iii). In order to streamline this process, the Commission should establish a means for manufacturers and private labelers to submit proposed redactions of confidential information. And, if the Commission determines that the information is indeed confidential, it should have a method for ensuring that the information remains confidential (e.g., is not inadvertently disclosed per a Freedom of Information Act (FOIA) request or other public disclosure).

C. The Commission May Need To "Restart"  
The Statutory Timeframes In Limited Situations

There are some limited circumstances in which the Commission should restart the clock on the statutory deadlines. AHAM believes that those circumstances include:

- The notification goes to the wrong manufacturer or private labeler;

- Incomplete information is provided in the incident report;
- Notification goes to the wrong contact at the manufacturer or private labeler even though the firm has provided accurate contact information;
- The person who submitted the report corrects information in the original report. Changes to any of the Required Information fields can completely alter the character of the report, and may even require a different manufacturer or private labeler to be notified.

#### **IV. Materially Inaccurate Information**

##### **A. The Commission Should Define What Constitutes Materially Inaccurate Information**

The Commission should develop a clear definition of the term “materially inaccurate information.” AHAM suggests that the Commission evaluate other statutory and regulatory definitions of the term as well as reviewing case law and plain language definitions. Black’s Law Dictionary, for example, defines “material” as “of such a nature that knowledge of the item would affect a person’s decision-making process; significant; essential.” It defines a material fact as one “that is significant or essential to the issue or matter at hand.” Thus, a potential definition of “materially inaccurate information” could be inaccurate information that is significant or essential to the incident report.

The Commission should also identify information that, when incorrect, is categorically materially inaccurate. The following information may be materially inaccurate because it misidentifies the product being reported in the incident:

- Incorrect product;
- Incorrect brand;
- Incorrect manufacturer or private labeler;
- Incorrect model name or model number;
- Incorrect submitter contact information;

Information that is not directly related to the incident may also be materially inaccurate (for example, conclusory, unsupported, quality-based, or opinion statements about the product’s design or general safety). But this will require the Commission’s and the manufacturer’s expertise to determine.

##### **B. The Commission Must Have Clear And Consistent Criteria And Procedures Regarding Claims Of Materially Inaccurate Information**

The Commission should have clear procedures for addressing claims of materially inaccurate information in reports of harm and manufacturer comments. CPSA § 6A(c)(4) specifically outlines the Commission’s obligations regarding materially inaccurate information both before and after such information has been made available in the public database. At a minimum, the Commission must follow those procedures.

Upon a claim that a report of harm or a corresponding comment contains materially inaccurate information, the Commission must make a determination as to the accuracy of the report or comment. CPSA § 6A(c)(4). The Commission should not post the report until that determination is made. The statute does not limit the obligation to guard against materially inaccurate information to reports of harm and manufacturer comments. And according to the CPSIA's legislative history, the statute "requires CPSC to provide public access to a database of serious injuries and deaths caused by consumer products, but it does so requiring also that the information be truthful, correct, and properly verified." Cong. Rec. H3854 (2008), statement of Mr. Dingell (emphasis added). Ensuring that materially inaccurate information does not reach the database is in every interested party's interest--there is no value in inaccurate or misleading information. Allowing materially inaccurate information to go onto the publicly available database would undermine its integrity. Making a determination as to whether information is materially inaccurate will be extremely complex and will often be related to the technical aspects of the product at issue. Accordingly, it is critical that the Commission have properly trained and qualified staff in appropriate numbers to make these determinations.

AHAM suggests that when a report is determined to contain materially inaccurate information that report be marked on every page to indicate that it was removed or corrected because it contains materially inaccurate information (e.g., MATERIALLY INACCURATE--REMOVED FROM DATABASE ON [DATE]). Furthermore, when reports that were already included in the database are removed or corrected because they contain materially inaccurate information, there should be some form of public notice so that those who already viewed the report are aware that it was determined to be partially or completely inaccurate. If a subpoena or FOIA request requires public disclosure of a report that has been removed or corrected, the Commission must give the manufacturer its CPSA § 6(b) opportunity to object.<sup>17</sup>

C. It Is Critical That The Commission Take Measures To Prevent Fraudulent Reports Of Harm

It is critical that the Commission take measures to prevent the submission of fraudulent reports of harm. The Commission should also take steps to ensure that reports are not defamatory. As stated above, the Commission must have a clear review process and criteria for determining which reports will be included in the database and which will not. Fraudulent reports must not be posted. One potential way to prevent fraudulent reports is to include instructions on the report of harm that notify the submitter of the punishments for submitting fraudulent reports to the government. This should not, however, be done in a way that intimidates potential submitters.

Similarly, the Commission must have a method for verifying that those making incident reports are who they say they are, and that the reports are not made by competitors, interest groups, or others motivated to "salt" the database. For example, the Commission should check

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<sup>17</sup> The Commission should clarify how it will handle FOIA requests for reports posted on the public database, given that they will be publicly available. Similarly, the Commission should clarify how it will handle FOIA requests for documents that did not make it to the database (in whole or in part) due to being incomplete or containing materially inaccurate or confidential information.

whether multiple reports are being received from the same person (e.g., same phone number, email address, address, etc.), as this may signal fraudulent reports or reports being submitted by someone other than the persons or entities listed in §§ 6A(b)(1)(A)(i)-(v).

**D. The Commission Must Have Sufficient  
Disclaimers With Regard To Accuracy**

The Commission should include a few disclaimers with regard to the accuracy of the information in the database:

- CPSIA § 6A(b)(5) requires that the CPSC provide clear and conspicuous notice to database users that the Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the database. That notice should appear on every page of every report (including printed copies).
- Incident reports being reviewed for materially inaccurate information should not be posted until the review is complete and a determination of accuracy is reached. But if the Commission posts an incident report before such a determination, it should include a disclaimer stating that the report is under review because of a claim of materially inaccurate information. That disclaimer should appear on every page of the report (including printed copies).
- As discussed above, all reports removed from the database due to a determination of materially inaccurate information should be marked on every page of the report forever to indicate that they were removed for that reason (e.g., MATERIALLY INACCURATE--REMOVED FROM DATABASE ON [DATE]). Materially inaccurate information that is corrected should be identified in a similar way.
- As discussed above, printed documents should bear the print date in order to reduce confusion between versions of reports or manufacturer comments that could arise if reports are corrected after they are initially posted.

**V. Additional Database Content**

**A. The Commission Must Adhere To The Requirements Of CPSA §§ 6(a) And (b)  
If It Includes Additional Information In The Public Interest In The Database**

CPSA § 6A(b)(3) states that the Commission shall, in addition to complete incident reports received from listed reporters, “include in the database, consistent with the requirements of section 6(a) and (b), any additional information it determines to be in the public interest.” From the statute’s language, it is clear that the Commission can only include additional information in the database if it 1) determines that doing so is in the public interest; and 2) it follows the requirements of CPSA §§ 6(a) and (b). Accordingly, CPSA §§ 6(a) and (b) apply to all additional categories of information the Commission determines are in the public interest to include on the database. Only incident reports received under CPSA § 6A(b)(1)(A) are exempted from the requirements of CPSA §§ 6(a) and (b). CPSA § 6A(f)(1).

B. There Is Information That Cannot Be  
Included In The Database Under The Statute

The statute expressly states that the following information cannot be included in the database:

- Information received by the Commission under CPSA § 15(b). CPSA § 6A(f)(2)(A).
- Information received by the Commission under any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission. CPSA § 6A(f)(2)(B).
- Information exempt from disclosure under FOIA, trade secrets, and other confidential information. *See* CPSA § 6A(c)(2)(C)(ii); CPSA §§ 6(a)(1)-(2).

In addition, the Commission can only include information it derives from mandatory recalls and voluntary corrective action plans of which it has notified the public per CPSA § 6A(b)(1)(B). AHAM interprets that to mean that only Commission reports can be included in the database, not documents submitted by manufacturers under CPSA § 15.

The Commission should clearly state what information cannot be included in the database.

\* \* \* \*

AHAM appreciates the opportunity to file these comments and would be glad to provide further information as requested.

Respectfully submitted,



Wayne Morris  
Vice President, Division Services



**Stevenson, Todd**

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**From:** Morris, Wayne [WMorris@AHAM.org]  
**Sent:** Friday, January 29, 2010 4:49 PM  
**To:** CPSC-OS; Stevenson, Todd; Hucker, Thomas; Kelsey, Mary; Doherty, Patrick  
**Cc:** Morris, Wayne; Samuels, Chuck; Cleary, Jennifer; Messner, Kevin  
**Subject:** AHAM Comments on CPSC Public Incident Database  
**Attachments:** AHAM Comments CPSC Database 012910.pdf

Todd:

Please find enclosed the comments of the Association of Home Appliance Manufacturers on the CPSC Public Incident Database.

Thank you for the opportunity to comment on this important project and the opportunity to participate in the public workshop.

**Wayne E. Morris**  
**Vice President, Division Services**  
**Association of Home Appliance Manufacturers**  
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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0019

Comments from Hamilton Beach Brands, Inc.

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## Submitter Information

**Name:** John Datovech

**Address:** United States,

**Organization:** Hamilton Beach Brands, Inc.

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0019.1:** Comments from Hamilton Beach Brands, Inc.



John J. Datovech • Director, Product Assurance

January 29, 2010

VIA EMAIL (cpsc-os@cpsc.gov)  
Office of the Secretary  
US Consumer Product Safety Commission  
4330 East west Highway  
Bethesda, MD 20814

Re: Comments of Hamilton Beach Brands, Inc. in Response to CPSC's Public Workshop on Establishment of a Public Consumer Product Safety Incident Database, Held January 11-12, 2010

Hamilton Beach Brands, Inc. participated on the *Data Analysis and Reporting* panel discussion and the *Manufacturer Notification and Response* panel discussion at the Consumer Product Safety Commission's (CPSC's) Public Workshop on Establishment of a Public Consumer Product Safety Incident Database held on January 11-12, 2010. In furtherance thereof, Hamilton Beach submits these responses to certain questions raised by CPSC as part of the Workshop.

## **DATA ANALYSIS AND REPORTING**

### **ISSUE: SHOULD THE CPSC DESIGN THE ONLINE INCIDENT REPORTING FORM TO ENSURE THE CAPTURE OF DATA THAT CAN BE USED IN SCIENTIFIC STATISTICAL ANALYSIS? IF SO, HOW?**

Yes. The form should facilitate statistical analyses with data collected in the database

Data may be used by CPSC staff and manufacturers to calculate incident rates. Although these rates cannot be extrapolated to establish overall incident rates, they may suggest emerging hazard trends. This should improve public safety. Such use of the data accomplishes the second stated objective in CPSC's September 10, 2009 report to Congress, i.e., to "improve CPSC's ability to identify risks and respond quickly." Designing the database to facilitate statistical analyses also furthers CPSC's IT modernization plan of improving its early warning system and performing predictive modeling.

CPSC should use uniform coded data in certain critical fields:

- The database should use drop-down lists (or auto-fill fields) for hazard codes (e.g., fire, spark, smoke, burning odor, electrical shock, small parts in food, small parts accessible to children, etc.) and (potential) injury codes, similar to those used in the NEISS database. CPSC can develop a comprehensive list of hazard codes from existing information in prior recalls.
- Product brand names should be collected as a surrogate for the manufacturer/private labeler names. This field should use an auto-fill capability to ensure data consistency. CPSC can develop a list of brand names using data already in the CPSC's other databases and from brand name holders who register contact information with the agency (as will be discussed later).

- Names of retailers should be collected. Manufacturer/private labelers' identities cannot always be determined by looking at a product. Collecting this information permits CPSC to notify retailers of incidents, as they often direct-import products. This field should be an auto-fill field to ensure data consistency.

**ISSUE: WHAT CAN THE CPSC DO, FROM A SYSTEM DESIGN PERSPECTIVE, TO ENSURE THE ACCURACY OF SUBMITTED DATA?**

Requiring identification information from anyone reporting an incident is the single most important feature for ensuring data integrity. In addition, CPSC should:

- Assign a unique incident ID to each reported incident
- Allow the person making the report to create a unique user ID and Password tied to each report he/she makes
- Include data fields for both CPSC validated data such as IDI findings and manufacturer/private labeler ("brand owner") responses
- Allow unlimited free text entries to describe incidents (in addition to the coded incident data)
- Allow the person making the report to amend it (security is enhanced with a user ID and Password)
- Allow a brand owner to submit data, with CPSC publishing it, after CPSC initially publishes the incident
- Maintain an audit trail every time an incident record is modified.

**ISSUE: WHAT CAN THE CPSC DO, FROM A SYSTEM DESIGN PERSPECTIVE, TO ENSURE THE ONGOING AND PERPETUAL INTEGRITY OF SUBMITTED DATA?**

Ensuring the system is a closed-loop that allows for feedback on, and modification of, published data is the most important feature for ensuring on-going and perpetual integrity of the data. Moreover, the CPSC should have the ability to either remove falsified data or correct erroneous data, at any time.

**ISSUE: IN WHAT FORMATS SHOULD THE CPSC MAKE DATA AVAILABLE TO THE PUBLIC? PLEASE EXPLAIN YOUR REASONING.**

The database should include the capability for accessing data in multiple formats for different categories of users.

- The database should provide easy-to-view, on-screen listings of data for ordinary consumers researching a particular (type of) product.
- The database should provide downloadable data in common file formats (e.g., .xls and/or .csv) so brand owners and other interested parties (e.g., third-party safety advocates) can integrate the data into their own systems. This capability increases the likelihood that brand owners will use the data in their own early warning systems. This furthers CPSC's intention to "actively engage manufacturers, retailers, and distributors to ensure their full partnership in protecting consumers from dangerous products." (September 10, 2009 report to Congress.)

**ISSUE: WHAT TYPES OF DATA ANALYSIS AND REPORTING TOOLS ARE BEING USED BY THIRD-PARTY ANALYSTS IN THE PUBLIC AND INDUSTRY? WHAT ARE THESE TOOLS RELATIVE MERITS AND DRAWBACKS?**

Hamilton Beach uses software tools such as COGNOS Powerplay to analyze its data. COGNOS Powerplay allows both web-based and desktop-based access to data in its proprietary databases from an easy-to-use "front-end." Data accessed via COGNOS Powerplay can be exported to Excel or other programs. Drawbacks include limited graphing capabilities and the need for a computer programmer to build "COGNOS cubes" that allow access to the data.

**ISSUE: WHAT DATA SETS, INCLUDING INFORMATION FROM REPORTS OF HARM AND MANDATORY AND VOLUNTARY RECALL NOTICES, SHOULD BE MADE AVAILABLE FOR PUBLIC SEARCH AND REPORTING? WHY?**

The database should make available information specified in the enabling legislation, NEISS data and data included in recall announcements. This information is either required to be disclosed or otherwise in the public domain. The database should exclude data otherwise treated as confidential under the law.

**REPORTS OF HARM (INCIDENT REPORT FORM)**

**ISSUE: HOW SHOULD THE CPSC DESIGN THE INCIDENT REPORT FORM SO THAT IT IS CLEAR AND EASY FOR USERS TO COMPLETE?**

The incident report form should contain as many drop-down and auto-fill fields as possible. This will make the form easier to complete and facilitate statistical analysis of the data. The law mandates the collection of certain information; these fields should be marked with an asterisk to indicate they are required fields.

**ISSUE: FROM A DESIGN PERSPECTIVE, HOW SHOULD THE CPSC DEAL WITH INCOMPLETE REPORTS OF HARM?**

If a user attempts to submit an incomplete report (i.e., one without the requisite minimum information), the user should receive feedback from the website upon clicking the "submit" button. The feedback should inform the user that the report lacks required information and cannot be processed without it. Incomplete reports should not be accepted by the website until the required information (or "unknown") is entered into the form.

**ISSUE: SHOULD THE INCIDENT REPORT FORM CHECK FOR INACCURATE INFORMATION? HOW?**

No, that is not the function of the form. A security feature, such as requiring the user to type a combination of letters and numbers appearing on the screen at the time of submission, should be included to ensure an automated "robot" is not spamming the database with bogus information.

**ISSUE: WHAT, IF ANY, INSTRUCTION TO USERS SHOULD BE INCLUDED ON THE INCIDENT REPORTING FORM?**

Instructions must be simple, i.e., at an eighth-grade comprehension level. They should identify all required information. Instructions should state the form cannot be processed without the required information. Instructions should explain the value to CPSC of including as much information as possible. Each field should also have links on which the consumer can click for more detailed explanations of the type of information to be included.

**ISSUE: SHOULD THE INCIDENT REPORT FORM CONTAIN LINKS TO OUTSIDE WEBSITES? PLEASE EXPLAIN YOUR REASONING.**

No.

**ISSUE: WHAT, IF ANY, DISCLAIMERS OR QUALIFICATIONS SHOULD APPEAR ON THE INCIDENT REPORT FORM?**

A disclaimer that CPSC has not independently verified the information contained in the database should appear on all views where the consumer interacts with the database, whether viewing existing reports on-screen, reading printed versions of existing reports or entering a new report. To submit a report, the user should have to click an acknowledgement button certifying the information is true and accurate to the best of his or her knowledge and belief.

**ISSUE: SHOULD ANY CATEGORY OF PERSONS BE EXCLUDED FROM SUBMITTING REPORTS OF HARM FOR INCLUSION IN THE PUBLIC DATABASE, AND, IF SO, BY WHAT MEANS?**

No.

**ISSUE: SHOULD REPORTS OF HARM SUBMITTED BY TELEPHONE OR PAPER MEET THE SAME STATUTORY TIME FRAMES FOR SUBMISSION IN THE PUBLIC DATABASE?**

Yes.

**ISSUE: WHAT SHOULD A DESCRIPTION OF THE CONSUMER PRODUCT ENTAIL AND WHY?**

Brand name ("unknown" can be an option), category of product (an auto-fill list could be developed from the existing search list on the CPSC recall website), model number, serial/series number/code, and text description of the product.

**ISSUE: WHAT MEANS CAN THE CPSC EMPLOY TO ENSURE THAT THE CORRECT MANUFACTURER AND/OR PRIVATE LABELER ARE IDENTIFIED IN A REPORT OF HARM?**

CPSC should collect the brand name of the product and alert the brand owner of the report. Brand owners are in the best position to determine the manufacturer/private labeler of a product, and it is in their interest to do so in a timely fashion if they choose to respond to a report. Manufacturers of a given product can change over time, and product supply chains are often complex. Allowing brand owners to register contact information with CPSC will facilitate the notification process and hopefully automate it in most cases, thereby minimizing agency resources.

In addition, CPSC should collect retailer identification information. CPSC should also notify the retailer of the report. Often, the retailer is the "manufacturer" in that the retailer licenses a brand name (or owns a private label) and direct-imports products.

**WHAT CONTACT INFORMATION MUST BE PROVIDED, AT MINIMUM, TO MEET THE STATUTORY REQUIREMENT FOR INCLUSION IN THE DATABASE?**

Full name, complete address, telephone number(s), and e-mail address.

**HOW SHOULD THE INCIDENT REPORT FORM ADDRESS THE SUBMITTER'S VERIFICATION OF THE INFORMATION SUBMITTED?**

Upon clicking the "submit" button, the user should be made to click an "I agree" button that certifies the information is true and accurate to the best of his or her knowledge and belief.

**ISSUE: HOW SHOULD THE INCIDENT REPORT FORM ADDRESS THE SUBMITTER'S CONSENT FOR: (I) INCLUSION IN THE PUBLIC DATABASE; AND (II) RELEASE OF CONTACT INFORMATION TO THE MANUFACTURER OR PRIVATE LABELER? ARE THERE ANY OTHER ISSUES RELATED TO THE USER'S CONSENT THAT THE CPSC SHOULD CONSIDER?**

This can be addressed with simple check boxes on the form. Consent for inclusion in the public database should be a required box; however, the release of contact information should be optional. The form should clearly state that the consumer's contact information will not be released to the public. The form, next to the "release of contact information" box, should state that the manufacturer/private labeler may contact the consumer in order to investigate the report and CPSC encourages consumers to cooperate with such investigation.

**MANUFACTURER NOTIFICATION AND RESPONSE**

**ISSUE: WHAT MEANS SHOULD THE CPSC EMPLOY TO NOTIFY MANUFACTURERS AND PRIVATE LABELERS REGARDING A REPORT OF HARM WITHIN THE FIVE DAY STATUTORY TIME FRAME?**

Automated, real-time email notification to one or more individuals listed in the CPSC's database (redacted from public view) as registered contacts specifically for notification purposes.

**ISSUE: GIVEN THE STATUTORY TIMEFRAME FOR NOTIFICATION, SHOULD MANUFACTURERS AND PRIVATE LABELERS BE ABLE TO "REGISTER" CONTACT INFORMATION WITH THE COMMISSION FOR THE PURPOSES OF NOTIFICATION OF A REPORT OF HARM? PLEASE EXPLAIN YOUR REASONING. WHAT FORM OF CONTACT INFORMATION SHOULD BE ACCEPTABLE, I.E., ELECTRONIC MAIL ONLY? WHAT OTHER ISSUES SHOULD THE CPSC CONSIDER?**

Yes. Registration of brand owners should be permitted. Email-only is acceptable, because it (1) allows faster notification and response, which promotes public safety, (2) is most efficient for CPSC, (3) can be automated to reduce possibility for error/oversight, (4) permits messages to reach relevant individuals, even when away from their offices (assuming they carry a smart phone), and (5) reflects a common method for business communications.

**ISSUE: WHAT, IF ANY, AUTHORITY DOES THE CPSC HAVE TO WITHHOLD A REPORT OF HARM FROM THE PUBLIC DATABASE IF A MANUFACTURER OR PRIVATE LABELER CLAIMS THE REPORT CONTAINS MATERIALLY INACCURATE OR CONFIDENTIAL INFORMATION?**

The CPSIA permits withholding information from the database if CPSC agrees with the manufacturer that the report contains materially inaccurate or confidential information.

**ISSUE: WHAT MEANS SHOULD THE CPSC EMPLOY TO ALLOW MANUFACTURERS AND PRIVATE LABELERS TO SUBMIT COMMENTS REGARDING A REPORT OF HARM OR TO DESIGNATE CONFIDENTIAL INFORMATION? WHAT ISSUES SHOULD THE CPSC TAKE INTO CONSIDERATION WHEN DEVELOPING SUCH PROCESS?**

Electronic submissions accommodating text, photos and other documents as attachments.

**ISSUE: IF A MANUFACTURER OR PRIVATE LABELER REQUESTS THAT A COMMENT ASSOCIATED WITH THE REPORT OF HARM BE MADE AVAILABLE IN THE PUBLIC DATABASE, WHAT, IF ANY, CIRCUMSTANCES SHOULD PREVENT SUCH COMMENT FROM INCLUSION IN THE PUBLIC DATABASE?**

- Any comment the Staff has found to be falsified.
- Inflammatory and *ad hominem* remarks or invective.
- Legal opinions.
- Information patently violating generally accepted scientific principles.

**ISSUE: WHAT, IF ANY, CIRCUMSTANCES MAY ARISE WHICH RESTART ANY TIMEFRAMES CONTEMPLATED IN THE STATUTE WITH REGARD TO MANUFACTURER NOTIFICATION AND RESPONSES?**

If the person who filed the initial report provides new or supplemental information to CPSC before CPSC publishes the initial report.

**HOW CAN THE CPSC ENSURE THAT MANUFACTURERS AND/OR PRIVATE LABELERS DO NOT USE A SUBMITTER'S CONTACT INFORMATION FOR PURPOSES OTHER THAN VERIFICATION OF A REPORT OF HARM? BY WHAT MEANS CAN THE CPSC ENFORCE SUCH PROVISION?**

Various laws already protect the privacy of consumers who provide such information. Also,

- CPSC can publish a list of uses deemed to constitute "abuse."
- In-depth investigation of a report of harm, which involves more than mere confirmation of its alleged occurrence, should not be considered abuse.
- CPSC can create a link on the database homepage to a form where consumers can report abuse.



## **ADDITIONAL DATABASE CONTENT**

### **ISSUE: WHAT ADDITIONAL CATEGORIES OF INFORMATION SHOULD THE CPSC INCLUDE IN THE PUBLIC DATABASE AND WHY?**

The database should make available information specified in the enabling legislation, NEISS data and data included in recall announcements. This information is either required to be disclosed or otherwise in the public domain.

### **ISSUE: WHAT, IF ANY, INFORMATION CANNOT BE INCLUDED IN THE PUBLIC DATABASE PURSUANT TO THE STATUTE AND WHY?**

The database should exclude data treated as confidential under the law, such as 15(b) reports, and automatic voluntary reporting data from retailers and manufacturers: such data is excluded under the CPSIA, and its inclusion would have a counterproductive, chilling effect on voluntary reporting.

### **ISSUE: UNDER WHAT CIRCUMSTANCES ARE THE PROVISIONS OF SECTION 6(A) AND (B) OF THE CPSA RELEVANT TO THE PROVISIONS OF SECTION 6A OF THE CPSA, ESPECIALLY WITH REGARD TO ADDITIONAL CATEGORIES OF INFORMATION THAT MAY BE INCLUDED IN THE PUBLIC DATABASE?**

Hamilton Beach has no comment.

## **MATERIALLY INACCURATE INFORMATION**

### **ISSUE: IS THE CPSC'S RESPONSIBILITY WITH REGARD TO MATERIALLY INACCURATE INFORMATION LIMITED TO REPORTS OF HARM AND MANUFACTURER COMMENTS? WHY OR WHY NOT?**

No. CPSC should exclude materially inaccurate information regardless of its source.

### **ISSUE: WHAT, IF ANY, MEASURES SHOULD THE CPSC EMPLOY TO PREVENT THE SUBMISSION OF FRAUDULENT REPORTS OF HARM WHILE NOT DISCOURAGING THE SUBMISSION OF VALID REPORTS?**

When the person submitting the report clicks the "submit" button, he or she should be required to click an "I agree" button expressly certifying the information to be true and accurate to the best of his or her knowledge and belief. Also, a security feature (e.g., requiring the consumer to enter a combination of letters and numbers appearing on the screen at the time of submission) should be included to ensure an automated "robot" is not spamming the database with bogus information.

### **ISSUE: WHAT TYPES OF INFORMATION CONSTITUTE MATERIALLY INACCURATE INFORMATION? PLEASE EXPLAIN YOUR REASONING.**

- Any incident report the Staff has found to be falsified.
- Inflammatory and *ad hominem* remarks or invective.
- Legal opinions.
- Information patently violating generally accepted scientific principles.

The database should be a repository of fact-based information. If the database becomes a forum for disgruntled individuals, interest groups, attorneys and insurance companies looking to create a record for litigation or other self-promotion, it becomes irrelevant and will not be used as a legitimate information source by those seriously concerned about product safety.

**ISSUE: HOW SHOULD THE CPSC PROCESS A CLAIM THAT A REPORT OF HARM OR A MANUFACTURER COMMENT CONTAINS MATERIALLY INACCURATE INFORMATION, BOTH BEFORE AND AFTER SUCH INFORMATION HAS BEEN MADE AVAILABLE IN THE PUBLIC DATABASE?**

CPSC can post a prominent disclaimer that mere inclusion of a report or manufacturer comment in the database does not indicate CPSC has reviewed the report/comment and found them to be meritorious.

Post-publication, CPSC can internally investigate claims of material inaccuracy and either post a clarification/disclaimer or delete materially inaccurate information. CPSC should focus its resources on reports and manufacturer comments that involve incidents of a product failing to comply with a product safety rule or voluntary consumer product safety standard, containing a defect that could create a substantial product hazard to consumers or creating an unreasonable risk of serious injury or death.

**ISSUE: HOW SHOULD THE CPSC ALLOW A SUBMITTER OR OTHERS TO CLAIM THAT A MANUFACTURER HAS SUBMITTED MATERIALLY FALSE INFORMATION?**

Designating each incident with a unique identification number will permit a submitter or others to specifically reference a manufacturer's comment. Just as with reporting abuses of the release of contact information, a button can be set up on the database homepage that links to a form to file such reports. Publishing replies, rebuttals and surrebuttals invites endless commentary and argument that could undermine the purpose of the database.

**ISSUE: GIVEN THE STATUTORY TIMEFRAME, HOW SHOULD THE CPSC REVIEW CLAIMS OF MATERIALLY INACCURATE INFORMATION?**

The timeframe for reviewing materially inaccurate information should not affect the timeframe for notifying manufacturers/private labelers or for publishing reports, provided (a) a process exists for reviewing, modifying or removing materially inaccurate information from the database, and (b) all views, print outs and downloads of data are clearly marked with a prominent disclaimer that mere inclusion of a report or manufacturer comment in the database does not indicate CPSC has reviewed the report or comment and found either of them to be meritorious.

**ISSUE: WHAT SPECIFIC DISCLAIMERS SHOULD THE CPSC MAKE WITH REGARD TO THE ACCURACY OF THE INFORMATION CONTAINED IN THE PUBLIC DATABASE AND WHY? WHERE SHOULD SUCH DISCLAIMERS APPEAR AND WHY?**

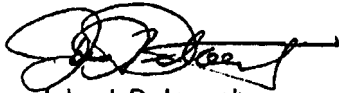
All views, print outs and downloads of data are clearly marked with a prominent disclaimer that mere inclusion of a report or manufacturer comment in the database does not indicate CPSC has reviewed the report or comment and found either of them to be meritorious. As a practical matter, the abbreviated timeframe mandated by Congress and its failure to provide adequate funding preclude CPSC from performing a thorough investigation of every report of harm or manufacturer comment. Nevertheless, an unsophisticated user of the database may erroneously assume the presence of information in this CPSC-sponsored database means it has

been vetted by CPSC. Undue weight may be given to both reports of harm and manufacturer comments.

## **CONCLUSION**

Hamilton Beach Brands, Inc. appreciates this opportunity to provide comments and looks forward to working cooperatively with CPSC as it creates the section 212 database. Please feel free to contact us with any questions or comments.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "John J. Datovech", with a long horizontal flourish extending to the right.

John J. Datovech,  
Director, Product Assurance

cc: Scott R. Pinzone, Director, Litigation & Regulatory Affairs

**Stevenson, Todd**

---

**From:** John Datovech [john.datovech@hamiltonbeach.com]  
**Sent:** Friday, January 29, 2010 4:38 PM  
**To:** CPSC-OS  
**Cc:** Scott Pinzone  
**Subject:** Hamilton Beach Brands, Inc. Comments on the Establishment of a Public Consumer Product Safety Incident Database  
**Attachments:** Hamilton Beach Brands Comments on Section 212.pdf

Hamilton Beach Brands, Inc. participated in the CPSC's Public Workshop on January 11-12, 2010. In addition to the verbal comments expressed at the workshop, Hamilton Beach Brands, Inc. respectfully submits the attached written responses to the questions posed by the CPSC staff in its workshop agenda.

Sincerely,

John J. Datovech, P.E., C.F.E.I  
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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0020

Comments from the Information Technology Industry Council

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## Submitter Information

**Name:** No Name

**Address:** United States,

**Organization:** Information Technology Industry Council (ITI)

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## General Comment

See attached

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## Attachments

**CPSC-2009-0112-0020.1:** Comments from the Information Technology Industry Council



## Information Technology Industry Council

Leading Policy for the Innovation Economy

### **ITI COMMENTS TO THE CONSUMER PRODUCT SAFETY COMMISSION RELATING TO THE WORKSHOP ON THE ESTABLISHMENT OF A PUBLIC CONSUMER PRODUCT SAFETY INCIDENT DATABASE**

The Information Technology Industry Council (ITI)<sup>1</sup> respectfully submits comments relating to the workshop on the establishment of a Public Consumer Product Safety Incident Database that was held by the Consumer Product Safety Commission ("Commission"). The database is to be established pursuant to Section 6A of the Consumer Product Safety Improvement Act of 2008 (the "Act"), 15 USC 2055a ("Section 6A"). These comments are submitted for the Commission's consideration pending publication of the proposed final rule.

1. **The scope of the database is limited to reports of harm and not to general product issues.** The CPSC should ensure that the scope of the database is limited to the *safety* of consumer products by including reports that contain the required description of "harm"<sup>2</sup>, rather than reports relating to general product quality, service issues, or other types of quality complaints. As discussed below, the harm reported must "relat[e] to the use of the consumer product."<sup>3</sup>
  - a. The statutory purpose of the database is to provide information "on the safety of consumer products, and other products or substances regulated by the Commission".<sup>4</sup> This scope is reinforced by the requirement that the Report include a statement of the "harm"<sup>5</sup> and that the database consist of "reports of harm."<sup>6</sup> The content of the database should therefore be limited to information that the Commission determines is reasonably related to the safety of consumer products as indicated by specific reports of harm caused by those products.
  - b. Including reports that relate broadly to quality or service issues will dilute attention from the types of reports contemplated by the statute that bear more directly on

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<sup>1</sup> ITI is the premier voice, advocate, and thought leader for the information and communications technology (ICT) industry. ITI is widely recognized as the tech industry's most effective advocacy organization in Washington D.C., and in various foreign capitals around the world. For more information visit: [www.itic.org](http://www.itic.org)

<sup>2</sup> 6A(g) 15 USC 2055a, the statutory definition includes a risk of harm.

<sup>3</sup> 6A(b)(2)(B)(iii).

<sup>4</sup> Section 6A(a); 15 USC 2055a.

<sup>5</sup> 6A(b)(2)(B).

<sup>6</sup> Section 6A(b) specifying that the database consist of "reports of harm" that are received by the Commission, as well as certain other information within the possession of the Commission.



potential safety concerns, with the risk of reducing the database to a general commentary on product quality and generalized consumer dissatisfaction.

2. **The Commission should issue clarifying guidance on what constitutes a report of *harm related to the use of a consumer product*, as required by the Act<sup>7</sup>.** While the person submitting the information must submit a verification that the information is “true” and “accurate,”<sup>8</sup> there is nonetheless a risk that the information so “verified” by the submitter is actually not true and accurate and/or that there is not a plausible connection between the product and “harm.” Therefore, in order to safeguard the usefulness and reliability of the database, the Commission should vigorously comply with the requirement that it not include in the database materially inaccurate information.<sup>9</sup> The Commission should exercise discretion, as explicitly contemplated by the Act, to help ensure that a plausible nexus or causal relationship is reasonably apparent, in the judgment of the Commission, between the harm and the use of the consumer product before the information is added to the database. Information should be excluded where the Commission determines that the product does not present a risk of the alleged harm.
- a. The Commission has explicit authority to evaluate the substance of submitted reports. The Act contemplates that the Commission use its expert discretion to define each of the required entries: “the Commission shall establish . . . a requirement that any report include, at a minimum . . .”<sup>10</sup> This language makes clear that the Act itself does not establish all the requirements, but that the Commission shall finally define the requirements for each of the minimum sets of information established by the Act. And information must be excluded that is not “true” and “accurate.”
  - b. The Commission also has inherent authority to interpret and apply the standards delegated to it by statute even without the explicit statutory directive that the Commission establish the requirements.
  - c. With respect to particular types of reports the Commission is likely to see, the Commission should exercise its authority to exclude allegedly “verified” reports, or include reports not submitted to the database (but that are otherwise eligible for inclusion), to ensure the required relationship is evident between the harm and the product use.<sup>11</sup> For example:
    - i. “Illness, injury or death.”<sup>12</sup> While most reports of harm should be easy to interpret, it is possible that a person could “verify” an allegation that a product caused a harm that has no reasonable relation to the use of that product. Consider the following examples:

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<sup>7</sup> 6A(b)(2).

<sup>8</sup> 6A(b)(2)(B)(v).

<sup>9</sup> 6A(c)(4).

<sup>10</sup> Section 6A(b).

<sup>11</sup> 6A(b)(2)(B)(iii).

<sup>12</sup> 6A(g)(1).



1. An allegedly “verified” report that claimed that a kitchen electronic appliance emitted carbon monoxide, causing the person to faint.
  2. An allegedly “verified” report that claimed that a battery used in an electronic product polarized the ions in an individual body, resulting in specific or generalized malaise.
  3. An allegedly “verified” report in which a consumer thinks there is a risk but there is not, such as “computer runs too hot”.
- d. “Risk of injury, illness or death *as determined by the Commission.*” The Congress explicitly contemplated that the Commission should determine whether a specific report relates a risk of harm sufficient to be included in the database.

The database required by Section 6A is not a database to report all violations of standards/rules enforced by the Commission, but only those violations that result in a harm (including risk of harm).

An example is the home lead testing kit discussed at the workshop. Consumers may test items themselves and report failing results. The Commission should issue guidance with respect to two issues with this scenario:

1. Assessing whether the results are accurate.
2. Even if the results are accurate, whether the results indicate a known risk of illness, injury or death even though they may exceed applicable standards, rules or regulations.

Whereas the statute reads, “... risk of injury, illness or death as determined by the CPSC”, there will likely be many cases where we have a wide variability in opinions amongst consumers, manufacturers and even within the CPSC itself as to what constitutes a “risk” of potential harm. In such cases, we recommend that the CPSC establish a guideline to consider product appropriate domestic and international standards. These widely accepted standards can serve as reliable sources of information necessary to assess risk and determine the possibility of injury, illness or death.

- e. The Commission’s discretion to determine which reports (even among those that appear to have all five sets of required information) are eligible for the database would not serve only to appropriately filter complaints. It could also serve to include reports that a consumer may not have intended for the database because the consumer did not recognize the harm. Consider the crib example raised at the workshop, in which a





consumer thinks there is no danger but there is a risk to be stated: “crib bed is unstable and falls”.

3. **Incomplete submissions are not eligible for inclusion in the database and do not trigger manufacturer response timelines.** The Act clearly requires that a report include, “at a minimum,” five categories of information.<sup>13</sup> These five statutory categories define the minimum degree of clarity and accuracy in a report. Submissions that do not have the minimum required content do not count as “reports” that are eligible for inclusion in the database. Clarity and accuracy is required to ensure that the reports in the database contain information that can be instructive to the public and manufacturers.
  - a. Without the minimum required content, there is no “report” eligible for inclusion in the database. The Commission, of course, can and should, if appropriate, act on information presented in these submissions, but not all submissions will count as “reports” under Section 6A.
  - b. Without a report, no timelines apply and the 10-day manufacturer response period is not triggered. The statute is clear that the timelines for submission to a manufacturer, and for the manufacturer response, are triggered only upon submission of a “report.” The Commission may of course notify the manufacturer for information, but without a complete report no five-day or ten-day period under Section 6A begin.
  - c. Because the Act itself defines what constitutes a “report,” the Commission should reject any approach that abandons the statutory minimum threshold of required content in favor of an approach that assumes that ‘any information is better than none, even if the information is incomplete.’ The Act defines which information is required for an eligible report of a product issue. A purported report with less than the required content is highly likely to be unintelligible, misleading and/or simply incorrect.
4. **“Other types of information”.** The workshop also raised other types of information that may be included in the database, including the status of investigations, issue resolution, and third- party comment.
  - a. The status of CPSC investigations, including the existence of the investigation, should not be included in the database.
    - i. First, reference in the database to a CPSC investigation is likely to lend particular reports special credence, even if a disclaimer accompanies the status. There is a higher risk of unwarranted attention, consumer confusion, unfounded brand damage and unwarranted follow-on complaints, resulting in potential exaggeration of the reported issue while a review is pending.
    - ii. Second, considering the treatment of pending Section 15 submissions, which are confidential and may not be disclosed under the CPSA, there would be an

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<sup>13</sup> 6A(b)(2)(B)(i)-(v).



inappropriate discrepancy between the publicity of CPSC investigations into section 6A reports on the one hand, and on the other hand the confidentiality of section 15 CPSC investigations and joint planning (with the manufacturers) on pending matters, which are much more likely to address genuine product issues and become recalls.

- iii. This database is a collection of reports of product harm from consumers, not a summary of ongoing actions of the Commission. It can never be a comprehensive overview of Commission actions and investigations, and selectively including some CPSC inquiries will cause confusion, uncertainty and unwarranted adverse public sentiment that could be damaging to companies and adverse to the public interest in establishing reliable and accurate information.
- b. Issue status/resolution/remedies should not be included. This database is a database on the safety of consumer products, not a conflict resolution database for specific customers. There should not be status updates except for those introduced in manufacturer comments.
  - i. The absence of a process to consistently provide such updates to reports may lead to inaccurate conclusions about CPSC, consumer and manufacturer activities relating to reports in the database.
  - ii. Manufacturers who may otherwise make accommodations to consumers who report a product quality or service issue may be disinclined to do so if the accommodation may end up in the database and thereby serve as a precedent for addressing all consumer complaints that may appear in the database.
  - iii. Enabling regular updates to specific complaints is likely to emphasize issues of service and customer satisfaction and soften focus on the underlying report of harm.
- c. Third-party comment is not appropriate for the database. The database exists for consumers and other persons defined by section 6A<sup>14</sup> to report harm relating to the use of consumer products. Only the persons with knowledge of the product issue, and the manufacturer or private labeler, should be able to opine on the report. Third-party participation would greatly increase the potential for speculation and exaggeration and would compromise identification of genuine product issues.

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<sup>14</sup> Section 6A(b)(1)(A) permits reports from consumers, government agencies, health care professionals, child service providers and public safety entities.

# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0021

Comment from Edward Desmond

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**Organization:** Toy Industry Association

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## General Comment

Attached please find TIA Comments on Establishment of a Public Consumer Product Safety Incident Database Under CPSIA Section 212.

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## Attachments

**CPSC-2009-0112-0021.1:** Comment from Edward Desmond



January 29, 2010

**Re: COMMENTS ON ESTABLISHMENT OF A PUBLIC CONSUMER  
PRODUCT SAFETY INCIDENT DATABASE UNDER CPSIA SECTION 212**

The Toy Industry Association appreciates the opportunity to provide feedback and input with respect to the issues raised in the CPSC "Report to Congress Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008" (the "Report to Congress") regarding the implementation of a searchable consumer product safety incident database, currently bearing the working name SaferProducts.gov. On behalf of its more than 550 U.S. toy manufacturers and importers, the Toy Industry Association ("TIA") offers the following comments, setting forth in more detail the issues that it will be presenting in a necessarily limited manner at the public hearing. TIA reserves the right to supplement or amend its comments as appropriate. As discussed below, TIA's comments seek to ensure the accuracy of the information on the database.

**BACKGROUND**

Section 212 of the CPSIA requires the U.S. Consumer Product Safety Commission (CPSC) to implement a publicly accessible, searchable database of consumer product incident reports. The database will permit consumers, government agencies, health care professionals, child service providers, and public entities to submit "reports of harm" relating to the use of products regulated by the CPSC. The CPSIA requires that a report include, at minimum: (1) a description of the product; (2) identification of the manufacturer or private labelers; (3) a description of the harm; (4) contact information for the person submitting the report; and (5) a verification by the person submitting the information that the information "is true and accurate to the best of the person's knowledge" and the person's consent to include the information provided in the database.

Within five days of receiving a report, the CPSC must, to the extent practicable, transmit it to the manufacturer. The manufacturer then has an opportunity to submit comments to the Commission that state the company's position and request that its comments appear in the database. The manufacturer also has the opportunity to identify any confidential information that appears in the report and request that the Commission redact such material before it appears online. The CPSIA provides, however, that the CPSC must post the report online within ten days of providing it to the manufacturer. The database, tentatively to be located at "SaferProducts.gov," is to go live no later than March 11, 2011 in accordance with the 18-month deadline set in the CPSIA.

The Commission is prohibited from including in the database information that CPSC determines is "materially inaccurate." However, absent implementation of adequate safeguards when the database is constructed, there will be an unacceptable risk that CPSC will not detect such inaccurate information and that the database will thereby facilitate the re-transmission of substantively inaccurate, misleading information.

## COMMENTS

### **1. Industry should be encouraged to provide the CPSC with product identification information that can be incorporated into the Consumer Portal of the SaferProducts.gov.**

The Report to Congress includes a mock-up of a possible layout for the web page comprising the consumer portal tool designed to facilitate consumer input of incident data, which was included in Appendix A of the Report to Congress. The mock up, as currently contemplated, includes a drop-down box from which a consumer can choose a type of product, a manufacturer, and a "Product Model". The mock up also includes a text box in which a consumer is permitted to supply a "Description of Product" in free text. It may be difficult to obtain a meaningful identification of a consumer product with these limited choices and descriptions. If the database permits a greater degree of specificity of product identification this will enhance the ability of the CPSC and manufacturers to spot trends and patterns in the consumer incident reports it receives. Such specificity is extremely helpful and is, in our opinion, essential to CPSC staff in distinguishing real from perceived hazards.

By way of example, The National Highway Traffic Safety Administration (NHTSA) has its own searchable database that permits consumers to provide and obtain information concerning motor vehicles. NHTSA's database may operate effectively using these limited and discrete means to identify motor vehicles, as the CPSC representatives have pointed out in various public meetings. However, there is a substantially more limited number of models and makes of automobiles, than there are individual consumer products. An automobile can be identified by the model year, manufacturer, make and model. To attempt to create a similar system to permit consumers to identify the hundreds of thousands of consumer products from a series of three drop down boxes and a single text box would be arduous if not impossible.

The CPSC has not indicated whether or how it intends to collect information from manufacturers to supply "product models" to populate the "drop down" menus from which consumers must choose, in order to identify their product. Many companies produce literally thousands of different individual products, which can change from year to year. The CPSC may find that it will be onerous to attempt to catalog each individual consumer product in a manner that would permit a consumer to identify his product from a series of "drop down" boxes and a single text box. Therefore, we support the concept of using online "wizards" to help consumers complete incident reports and help provide CPSC staff with greater consistency in reporting which can enhance the usefulness of the database. CPSC should make the entry of data clear and easy to follow. Every effort should be made to encourage factually accurate details in the report.

Industry should be encouraged to provide information to the CPSC to assist the CPSC to develop means to ascertain product identification for individual products. For example, for certain types of products, manufacturers may wish to suggest that the database require consumers to supply specific needed information, such as identifying features, size, color, date of manufacture, all identifying numbers and markings on the product, the country of origin, date of purchase, place of purchase, whether the product was purchased new or used and UPC codes. Manufacturers should be encouraged to provide the possible location on the product of identifying information or other data that would assist a manufacturer to more specifically identify a certain type of product which may be the subject of a reported incident. The level of detail and form of product identification will vary by industry and manufacturer, which may require representatives of all consumer product industries to provide feedback to the CPSC and information they will need from consumers to assure accurate

product identification. The ability to tailor the specificity of product identification to individual industries and manufacturers will make the database information more useful and meaningful.

## **2. Consumers should be encouraged to provide contact information to the manufacturers.**

The CPSC should encourage consumers to disclose their identities to the product manufacturers in the interest of enhancing product safety. Manufacturers will often need to obtain further information directly from the consumer to more fully understand a reported safety incident or a potential safety issue. Manufacturers who are unable to speak directly to the person who has information concerning a possible safety incident will be hampered in their ability to completely understand and quickly respond to a potential safety issue.

CPSIA Section 212(b)(6) provides that "the Commission may not disclose, under this section, the name, address, or other contact information of any individual or entity that submits to the Commission a report described in paragraph (1)(A), except that the Commission may provide such information to the manufacturer or private labeler of the product with the express written consent of the person submitting the information." Accordingly, to increase the likelihood that consumers will agree to disclose their names to manufacturers, TIA requests that when consumers submit reports to SaferProducts.gov, they be provided with the following or a similar message: "Manufacturers sometimes find it helpful to speak directly with consumers to investigate safety issues and obtain information regarding reported incidents involving their products. May we disclose your name and contact information to the manufacturer or private labeler?" Manufacturers and stakeholders can provide additional feedback and work with the CPSC to modify this message as appropriate. However, the goal should be to encourage the sharing of information with manufacturers and private labelers, and thereby to increase the ability to conduct meaningful investigations and enhance product safety.

## **3. Persons submitting information to the SaferProducts.gov database should be required to affirmatively verify the information they are providing.**

Consumer product incident reports submitted for inclusion in the publicly searchable database under CPSIA Section 212 do not require any direct investigation nor confirmation by the CPSC as to the accuracy of such reports. Instead, the consumer report must include "verification by the person submitting the information, that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database." CPSIA Section 212(b)(2)(B)(v).

In the Report to Congress, the mock-up of a possible layout of the web page depicting the consumer portal for submission of incident reports does not require a consumer to affirmatively include such a verification with his report, nor does it even require the consumer to actively agree or disagree with this "verification." Instead, these words appear as a static, boilerplate part of a busy web page, and do not represent, as they should, a meaningful attestation or even an affirmation of the veracity of the information submitted. To address this concern and comply with Congress' intent in establishing a verification requirement, consumers should be requested to attest to the accuracy of information on submittal portals. The CPSC should require consumers to either affirmatively include the verification statement in their narrative description of the incident, or at least, to affirmatively choose to agree or disagree with the verification statement before continuing with the submission process. Consumers who are submitting unconfirmed and anonymous accounts of safety related incidents, should, at minimum, affirmatively acknowledge that they are standing behind their reports. Further, the verification statement should include a reference to the penalties for filing false reports, together with a verification check-off submittal box on the portal, which

could serve to deter the filing of false reports to the agency and help ensure accurate information upon which it can act.<sup>1</sup>

**4. The CPSC should develop guidelines for the acceptance and publication of photographs and attachments.**

The CPSIA does not require that the CPSC permit a consumer to add photographs or other files when they are submitting reports of incidents to be included in the publicly searchable database. Photographs can be highly misleading and inflammatory, without necessarily enhancing the description of an incident or the understanding of an issue. For example, a photograph of a product that has been in a fire, photographs of injuries or photographs of people in hospital beds may cause unneeded alarm or concern without providing any useful information to consumers regarding a specific safety issue.

If the CPSC nevertheless decides that it is beneficial to go beyond the database components contemplated under the CPSIA, and to permit persons who submit information to the database also to include photographs and other files, it would be appropriate for the CPSC to work with stakeholders to develop guidelines as to the types of photographs that would be permitted to be included in the database and the types of photographs that would not be permitted to be included in the database. For example, photographs showing the label of a product or an unusual feature of a product that is difficult to describe may be appropriate for inclusion in the database as this type of photograph would help to identify the product and help to more fully describe the consumer's interaction with the product. On the other hand, photographs of injuries, photographs of consumers or medical records of consumers would not serve to enhance the reader's understanding of the manner in which an incident occurred or the identity of a product but would, instead, be inflammatory or solely intended to arouse emotions.

TIA members would be happy to work with the CPSC to develop these types of guidelines. It is likely that members of other industries and other stakeholders would be happy to do so, also.

**5. Guidelines should be developed to ensure that reports submitted for inclusion in the database are limited to actual and timely "reports of harm," rather than outdated complaints or general expression of consumer dissatisfaction with a product.**

The CPSIA requires that the database shall include "reports of harm relating to the use of consumer products." The CPSIA defines "harm" as "injury, illness or death" or "risk of injury, illness or death, as determined by the Commission.

The Report to Congress does not address what procedures, if any, will be followed to separate reports that appear to describe only consumer dissatisfaction with a product from the "reports of harm" that Congress contemplated would be included in the database. Due to an inherent problem in assuring accuracy of reported data over lengthy periods of time, consideration should be given to limiting reporting of "old" or stale" data not contemporaneously related to the occurrence of the incident alleged. Users should not be able to report an incident after a year has passed from the alleged incident since data over time becomes inherently suspect.

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<sup>1</sup> Such verifications on form submittals are commonplace. For Example DHS I9, FTC FDC[P?]A Verification of Debt/Non Debt [NOTE: I'M NOT FAMILIAR WITH THIS PROCESS OR VERIFICATION FORM. PLEASE VERIFY.]

It would also be beneficial for the CPSC to work with stakeholders to develop guidelines for ensuring that a consumer who wishes to post an entry in the database has truly described a consumer product safety incident causing harm, as contemplated by the statute, as opposed to merely describing a product that does not meet the consumer's expectations. TIA member experience in processing CPSIA Section 102 reporting, is helpful and illustrative here. Often the apprehension of choking is determined to be distinguishable from an actual choking incident. CPSC's own reporting rules recognize this important distinction and the importance of factual delineation of an actual incident and injury data from concern about hypothetical harm.<sup>2</sup>

As an initial means to categorize reports, for example, the software in the consumer portal could be structured to ask questions such as, "Did the incident result in personal injury, illness or death?" If the consumer answered, "Yes," to the first question indicating that there was a personal injury, illness or death, further choices could include a question such as, "Did the injury or illness require any treatment?" with the possible responses being:

- (A) No treatment
- (B) First aid treatment
- (C) Treatment by a medical professional.

If the consumer answered, "No," to the first question, additional questions could follow, such as, "Did the incident result in a risk of injury, illness or death?"

The mock up of the possible web page for the consumer portal that was included in the CPSC's Report to Congress, included a text box next to a notation that says, "Description of Harm Caused." This text box, or a similar text box, could appear and be available for the consumer to use after the more objective questions asking for specifics of any claimed injury, illness or death or risk of injury, illness or death were answered. This process together with the aforementioned "Verification" requirement could also be expanded to help eliminate inaccurate, false or misleading position of data, which has been determined to be a problem inherent in other reporting systems<sup>3</sup>. This would permit the CPSC to more clearly understand whether a proposed entry describes harm or risk of harm caused by a product, and to identify, for exclusion, any entries that appear to be reflecting mere dissatisfaction with a product without any report of injury, illness or death, or risk of personal injury, illness or death. Recording this information in a systematic manner will also permit the CPSC and manufacturers to quickly identify and to provide more immediate focus on database entries in which serious harm or actual risk of serious harm has been reported.

**6. Guidelines should be developed for fair procedures to be followed where information reported may be inaccurate.**

The CPSIA requires that if the Commission determines the information in a report or comment is materially inaccurate, the Commission shall either decline to add the materially inaccurate information to the database, correct the materially inaccurate information in the report or add information to correct the inaccurate information in the database. The Report to Congress states that, "CPSC will expand its current efforts to verify the accuracy of incident reports, both by using

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<sup>2</sup> See for example 16 CFR 1117.3 which details with specificity as to what does or does not constitute a reportable choking hazard.

<sup>3</sup> A 2006 article in the Official Journal of the American Academy of Pediatrics by Michael J. Goodman, PhD, and James Nordin, MD, MPH, found that many of the entries in VAERS were made in connection with pending litigation, presumably in an attempt to create the appearance of a causal connection between certain vaccines and medical conditions. Vaccine Adverse Event Reporting System Reporting Source: A Possible Source of Bias in Longitudinal Studies, 117 Pediatrics 387 (2006).



technology and by continuing to investigate the most serious incidents.” The CPSC is to be lauded on this goal. Given the CPSC’s resource limitations, however, and its understandable inability to have the depths of product-specific knowledge that the manufacturer would have, it would be expected that potential inaccuracies in reported incidents would more likely be detected, first, by the manufacturer. There is a danger that inaccurate information regarding a consumer product can irreversibly damage the reputation of a company and the sales of its product. In addition, inaccurate reports provide a disservice to consumers, who may become concerned about a product they have purchased that actually poses no danger or who are misled in their purchasing decisions by such inaccurate reports. While the CPSIA provides that the website must have a "clear and conspicuous" notice that the CPSC "does not guarantee the accuracy, completeness, or adequacy of the contents of the database," the information will, nevertheless, appear on the website of a federal agency in an official "product safety incident database" and, regardless of any fine-print disclaimer, is likely to be considered and relied upon by many in the public as absolutely valid.

At the time of the publication of the Report to Congress, there had not yet been developed a specific outline of the steps that will be taken or procedures that will be followed to address claims of inaccurate consumer reports. The TIA recommends, at least for a trial period of time during the inception of the operation of the database, that procedures be adopted to permit there to be an extension of the 10 day period of time for publication of reports in the database under circumstances where there has been a reasonable challenge to the accuracy of a report. In addition we recommend that CPSC establish a process to address how it will identify and correct inaccurate information *before* it is posted online. Section 212(c)(4) provides that if the Commission determines information in a report (or comment) is inaccurate, it can decline to add the information to the database, correct the materially inaccurate information, or add information to correct the inaccurate information. Section 213(c)(3) explicitly provides a means for a manufacturer to designate information as such. Such a designation triggers the need for a Commission determination as to whether the information qualifies as confidential before posting the report online. If the report contains confidential material, then the Commission may not include the report in the public database until it has redacted the confidential information.

A similar process for addressing inaccurate information could be instituted wherein CPSC would not post a report that contains inaccurate material. The Commission has authority to provide such a mechanism based on its obligation to not post inaccurate information in the database and through the manufacturer's ability to comment on reports. When developing the "industry portal," the Commission should provide a means for a manufacturer to flag information in a report as inaccurate, similar to the way that a manufacturer will be able to designate information as confidential. The system might provide a tool for the manufacturer to highlight statements in the report as either containing proprietary information or inaccurate information. This would provide a shortcut to highlight potentially misleading, inaccurate information and facilitate easier review by CPSC staff as a basis for exclusion from posting until veracity is established.

It is also important that a means to remove or correct inaccurate information *after* it has been posted be clearly set forth. Section 212(c)(4) provides that the CPSC must remove or correct inaccurate reports within seven days after it determines the information is inaccurate. The CPSIA, however, does not provide a specific time period for the Commission to make such a determination. Any information that is flagged as questionable should be temporarily removed pending investigation to avoid indefinite re-publication of inaccurate information. The commission should set a time within which a claim of inaccuracy will be resolved and failing to meet the timetable should result in removal of posted information in question. This process could help avoid irreparable harm from posting incorrect data about a Company or its branded product.

Finally, the CPSIA Section 212(a)(b)(5) states that, “The Commission shall provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness or adequacy of the contents of the database.” The consumer product incident reports that comprise the SaferProducts.gov database, should be clearly identified as subject to such admonition and statutory conditions related to posting such information in the database.

To ensure that it is clear that the reports contained in the database may not be considered as materially accurate statutorily required disclaimers should be clear and unequivocal within the database and postings. CPSC must develop clear and conspicuous public notice that conveys the information in the database does not reflect CPSC findings or determinations. The database must accurately reflect the nature of the entries and that reports submitted by the public do not represent the views, findings or determinations of the CPSC unless specifically stated otherwise.

**7. CPSC should confirm that information submitted to the CPSC under Section 15(b) or any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler and the Commission will not be included in the SaferProducts.gov database and will still be subject to the protection and requirements of Section 6(a) and (b) of the CPSA.**

It appears clear under CPSIA Section 212(f)(2) that the requirements for establishment of the database do not remove the protections and requirements of Section 6(a) and (b) of the CPSIA for information submitted to the CPSC under Section 15(b) or any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler. However, there remains concern among stakeholders that this information will incorrectly be included in the database. The Report to Congress does not address this issue; however, the TIA urges the CPSC to confirm that the requirements of Section 6(a) and (b) of the CPSIA will still apply to information received by the Commission under Section 15(b) of the CPSIA and any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler and the Commission.

**8. Before an incident report is made publicly available on the database, CPSC should ensure that manufacturers and private labelers are provided 10 business days to review the report and comment.**

CPSIA Section 212(c) provides that within 5 days of receiving a report, the Commission shall “to the extent practicable” transmit it to the manufacturer or private labeler for comment. The Section further provides that, except where information has been determined “materially inaccurate,” the Commission shall make the report available in the database “no later than the 10<sup>th</sup> business day after the date on which the Commission transmits the report” to the manufacturer or private labeler for comment. CPSIA Section 212(c)(3)(A). Thus, in order to ensure that a posted report does not contain “materially inaccurate” information or a trade secret or other confidential commercial information, the CPSIA indicates that manufacturers identified in a report shall be given up to 10 business days to review, investigate, and comment before a report is published on the database.

Nevertheless, CPSC’s proposal in its Report to Congress incorrectly links the timing of posting complaints to the database to when CPSC receives complaints rather than when CPSC transmits complaints to manufacturers and private labelers. The Report states:

Incident reports will be published by CPSC to the public **within 10 business days of receipt.** If comments have been received from the manufacturer, these will be published along with the report. If the manufacturer has

indicated that the report contains confidential data, CPSC will have the ability to redact this data. (emphasis added).

This is inconsistent with the statutory language and may fail to provide manufacturers and private labelers a reasonable opportunity to review and comment on complaints.

CPSC has proposed in its Report to Congress an email contact system for the Industry Portal in order to facilitate transmitting incident reports to manufacturers “nearly instantaneously”. But, if there is a delay in transmission, even if through no fault of CPSC, manufacturers and private labelers must still be provided a reasonable opportunity to comment. This will help ensure that posted information is not materially inaccurate and does not contain trade secrets or other confidential commercial information, as required by applicable law. *See* 18 U.S.C. § 1905; 5 U.S.C. § 552(b)(4). Therefore, the TIA urges that CPSC post an incident 10 business days after *transmission* to the manufacturer for review, rather than posting the report within 10 business days after *receipt*.

\* \* \*

The TIA appreciates the CPSC’s efforts in soliciting feedback and input on these important issues. TIA also respectfully reserves the right to supplement these comments and to comment further on CPSC proposals for implementation when developed.

Should you have any questions or need clarification on the above comments, please do not hesitate to contact me at [edesmond@toyassociation.org](mailto:edesmond@toyassociation.org) or at 202-857-9608.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Desmond". The signature is fluid and cursive, with the first name "Edward" and last name "Desmond" clearly distinguishable.

Edward Desmond  
Executive Vice President, External Affairs

# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0022

Comment from Robert Waller

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**Organization:** Juvenile Products Manufacturers Association

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## General Comment

We appreciate the opportunity to submit the attached comments.

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## Attachments

**CPSC-2009-0112-0022.1:** Comment from Robert Waller



January 29, 2010

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

**Re: JPMA COMMENTS ON CPSC ESTABLISHMENT OF A CPSIA  
SECTION 212 PUBLIC CONSUMER PRODUCT SAFETY INCIDENT  
DATABASE**

The Juvenile Products Manufacturers Association (“JPMA”), on behalf of its more than 250 U.S. members is providing comment on the issues raised Pursuant to Section 212 of the Consumer Product Safety Improvement Act of 2008 regarding the implementation of a searchable consumer product safety incident database. Our members collectively account for approximately 95% of annual U.S. domestic juvenile product sales. Such products help keep babies safe. JPMA reserves the right to supplement or amend its comments as appropriate based upon proposals yet to be developed and posted by CPC staff.

Section 212 of CPSIA requires the U.S. Consumer Product Safety Commission (CPSC) to implement a publicly accessible, searchable database of consumer product incident reports. The database is expected to permit consumers, government agencies, health care professionals, child service providers, and public entities to submit reports of verifiable and actual harm relating to the use of products regulated by the CPSC. The CPSIA requires that a report include, as a minimum: (1) a description of the product; (2) identification of the manufacturer or private labelers; (3) a description of the harm; (4) contact information for the person submitting the report; and (5) importantly, a verification by the person submitting the information that it “is true and accurate to the best of the person’s knowledge.” Information about individuals submitting information on the database is confidential and is to be shared with the manufacturer if the individual submitting the report provides consent. Forms for reporting should provide an opt-in for such consent.

CPSC must within five days of receiving a report, to the extent practicable, transmit it to the manufacturer. The manufacturer then has an opportunity to submit comments to CPSC setting forth its position on the merits of the information or lack thereof. A request that its comments appear in the database about the report should be accommodated. The manufacturer can identify any confidential information that appears in the report and request that the Commission omit such material prior to any posting. The CPSC is directed to post the report online within ten days of providing it to the manufacturer and has indicated that the database is planned to be located at “SaferProducts.gov,” as of March 11, 2011 per the 18-month deadline set in the CPSIA. It is of vital interest to our

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**Juvenile Products Manufacturers Association, Inc.**

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members that CPSC implement robust safeguards for promptly identifying and limiting the posting of false, inaccurate or misleading information about products and companies well prior to any posting. CPSC must establish practical processes for promptly removing any such false, inaccurate or misleading information. The failure to do so could unfairly and materially impact the reputation of a company and/or its products. Fundamental fairness requires cautious handling of such issues to avoid needlessly harming many businesses, especially small businesses which comprise most of our membership and provide for most job opportunities in the U.S. today.

**1. CPSC can seek industry categorization of product information.**

CPSC's Report to Congress includes a mock-up of a possible form for the Web page for the consumer portal tool designed to allow consumer input of incident data. The initial version of the form provides a drop down box from which a consumer can chose a type of product, a manufacturer and designate a product model or identifier. A free form space is also provided for insertion of a product description, which could result in the insertion of confusing identification of the product. The database should permit a much greater degree of specificity of product identification data, in a manner that can help manufacturers and CPSC staff to differentiate between actual and phantom hazards and harm.

Manufacturer or trade association input on product categories and styles could be helpful to populate "drop down" menus which could provide consumers with better ways to accurately identify products and brands. CPSC itself estimates tens of thousands different individual product units and styles, often subject to periodic change, could be involved. The entry of data should be made as clear and useful as possible to ensure factually accurate details in such reports. Industry should be enlisted to assist the CPSC to develop means to ascertain product identification for each specific product category. Since, the level of detail and form of product identification may vary by industry and manufacturer, such feedback is essential.

***Formats that assure accurate product identification are essential***

This is particularly important since it is essential that inaccurate, false or misleading information be removed from posted reports. Misidentification of product either intentionally or inadvertently must be avoided so as not to unfairly harm the reputation of the product, manufacturer, distributor or retailer of the product involved. Guidelines as a pre-condition to posting in order to avoid dissemination of false or misleading information should be developed. Drop down menus or boxes should be used to better identify products. To the extent products cannot be accurately identified, CPSC should not post the complaint, since misidentification of products associated with complaints of harm could severely damage a company's reputation and is often not easily remedied once damaged.



**2. Consumers should be encouraged to provide contact information to the manufacturers.**

The CPSC should encourage consumers to disclose their identities to the product manufacturers who may be best situated to obtain further information directly from the consumer to more fully investigate and clarify a reported or potential safety issue. This aids in resolution of problems and enables quicker response to a potential safety issue. This is also helpful in enabling manufacturers to quickly investigate and comment on the claimed hazard or harm. With manufacturers only allotted 10 days to provide comments or to challenge the accuracy of a report of a safety incident involving harm possibly arising from one of its products, the ability to have the opportunity to contact consumers is essential (especially if the consumer allows such contact information to be disclosed). Clearly, manufacturers should be encouraged to speak directly with consumers to better investigate complaints and resolve actual safety issues involving their products. This also benefits CPSC staff who, although very efficient, may have limited ability and resources to follow up on every complaint received.

**3. Reports submitted for inclusion in the database are limited to actual “reports of harm.”**

The CPSIA requires that the database shall include “reports of harm relating to the use of consumer products.” The CPSIA defines “harm” as “injury, illness or death” or “risk of injury, illness or death, as determined by the Commission.

The Report to Congress does not address what procedures, if any, will be followed to separate reports that appear to describe only consumer dissatisfaction with a product from the “reports of harm” that Congress contemplated would be included in the database. Due to an inherent problem in assuring accuracy of reported data over lengthy periods of time consideration should be given to limiting reporting of “old” or stale” data not contemporaneously related to the occurrence of the incident alleged. Users should not be able to report an incident after a year has passed from the alleged incident since data over time becomes inherently suspect. Recording this information in a systematic manner will also permit the CPSC and manufacturers to quickly identify and to provide more immediate focus on database entries in which serious harm or actual risk of serious harm has been reported.

**4. False, inaccurate or misleading information should not be posted.**

The CPSIA requires that if the Commission determines that the information in a report or comment is materially inaccurate, the Commission shall either decline to add the materially inaccurate information to the database, correct the materially inaccurate information in the report or add information to correct the inaccurate information in the database. The Report to Congress states that, “CPSC will expand its current efforts to verify the accuracy of incident reports, both by using technology and by continuing to investigate the most serious incidents.” The veracity and integrity of the CPSC is at stake



here. The CPSC should ensure the information posted is not duplicative, false, materially inaccurate or misleading. Section 212(c)(4) provides that if the Commission determines information in a report (or comment) is inaccurate, it can decline to add the information to the database, correct the materially inaccurate information, or add information to correct the inaccurate information. Section 213(c) (3) explicitly provides a means for a manufacturer to designate information as such. Such a designation triggers the need for a Commission determination as to whether the information qualifies as confidential before posting the report online. Section 212(c) (4) provides that the CPSC must remove or correct inaccurate reports within seven days after it determines the information is inaccurate. If the report contains confidential material, then the Commission may not include the report in the public database until it has redacted the confidential information.

There is a danger that inaccurate information regarding a consumer product can irreversibly damage the reputation of a company and the sales of its product. In addition, inaccurate reports provide a disservice to consumers, who may become concerned about a product they have purchased that actually poses no danger or who are misled in their purchasing decisions by such inaccurate reports. While the CPSIA provides that the Web site must have a “clear and conspicuous” notice that the CPSC “does not guarantee the accuracy, completeness, or adequacy of the contents of the database,” the information will, nevertheless, appear on the Web site of a federal agency in an official “product safety incident database” and, regardless of any fine-print disclaimer, is likely to be considered and relied upon by many in the public as absolutely valid.

Therefore JPMA recommends that procedures be adopted by rule to assure the agency with the appropriate discretion not to post reports that it cannot assure are materially accurate. The agency should retain the essential discretion not to post. In addition it can use its discretion to permit there to be an extension of the 10 day period of time for publication of reports in the database under circumstances where there has been a challenge to the accuracy of a report. Finally, CPSC should establish a process to address how it will identify and correct inaccurate information *prior to* any posting online. The CPSIA Section 212(a) (b) (5) states that, “The Commission shall provide clear and conspicuous notice to users of the database that the Commission does not guarantee the accuracy, completeness or adequacy of the contents of the database.” It must also provide for this clarity in any database developed or Web site initiated.

**5. CPSC should always re-affirm that information submitted to the CPSC under Section 15(b) or any reporting program will not be included in the database and remains subject to the requirements of Section 6(a) and (b) of the CPSA.**

CPSIA Section 212(f)(2) requirements for establishment of the database do not remove the protections and requirements of Section 6(a) and (b) of the CPSA for information submitted to the CPSC under Section 15(b) or any other mandatory or voluntary reporting program established between a retailer, manufacturer or private labeler. Concerns expressed by stakeholders to date that this information should not be included

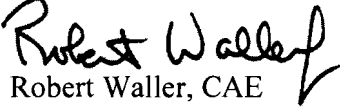


in the database, need to be recognized. CPSC should consistently confirm this in any postings on the database portals.



We appreciate the opportunity to submit these comments on behalf of our members. Should you have any questions or need clarification on the above comments please do not hesitate to contact JPMA.

Sincerely,

  
Robert Waller, CAE  
President

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**Juvenile Products Manufacturers Association, Inc.**

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# PUBLIC SUBMISSION

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**Docket:** CPSC-2009-0112

Meeting: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Comment On:** CPSC-2009-0112-0001

Meetings: Establishment of a Public Consumer Product Safety Incident Database; Public Workshop

**Document:** CPSC-2009-0112-0023

Comment from Douglas Troutman

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## Submitter Information

**Name:** Douglas Troutman

**Address:** United States,

**Submitter's Representative:** Douglas Troutman

**Organization:** The Soap and Detergent Association

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## General Comment

See Attached

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## Attachments

**CPSC-2009-0112-0023.1:** Comment from Douglas Troutman



# The Soap and Detergent Association

2009-0112-0023

February 26, 2010

Mr. Todd Stevenson  
Office of the Secretary  
United States Consumer Product Safety Commission  
4300 East West Highway  
Bethesda, MD 20814

Received CPSC  
2010 MAR -2 A 10:37  
Office of the Secretary  
FOI

## RE: Consumer Product Safety Commission – Product Incident Safety Database

Dear Mr. Stevenson;

SDA is a trade association representing the \$30 billion U.S. cleaning products market. SDA members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. The following are SDA comments regarding Commission structure and implementation of a product incident safety database.

Section 212 of the CPSIA requires the establishment and maintenance of a publicly available, searchable, and accessible consumer product safety database. The database is to include, "reports of harm relating to the use of consumer products" from a variety of entities, and is to include, among other things, a description of the product; identification of the manufacturer or private labeler; a description of the harm related to the use of the product; and contact information. Moreover, the database is to be searchable by date of report, the name of the product as well as model and other names given by the manufacturer, among other factors the Commission may provide.

SDA encourages the Commission to utilize best practices in creating the database that are consistent with the databases that manufacturers and others currently utilize to collect information and data from consumers and product users. SDA also encourages the Commission to focus the scope of the database on issues that are core to its mission of protecting public safety in this era of limited resources.

Factual accuracy and veracity are two fundamental elements underpinning a credible and viable incident database. These two elements are crucial to avoid false or misleading reports or even incident reports created based on mere rumor. The accuracy and completeness of factual circumstances are very important to the incident report, and are essential to any attempt to demonstrate incident patterns. To that end, the Commission should ensure that thorough and descriptive data fields are developed to accomplish the objective of securing accurate and complete information. This should include accuracy in product reporting that accounts for product, production or other manufacturing descriptors. Moreover, the database must have a mechanism for addressing false and inaccurate reports that do not meet the test of factual accuracy and veracity. Finally, a process for confirming the accuracy of an alleged incident is necessary.

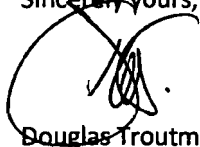
The statutory timelines for manufacturer's response to a report are relatively short, and to facilitate efficient responses to reports given the timelines, it will be imperative that a process for timely delivery, correct contacts and receipt be established. Proper notice and posting of the comments as soon as

practicable after the report throughout the process may pose significant time and process issues for the Commission. SDA urges careful attention to these issues and the potential burdens they may present for all involved parties. Clarification as to the requirements for challenging a report as false or inaccurate inside the response window is essential, as is the process for filing such challenges if the relevant information comes to light outside the response time.

Finally, SDA urges the Commission to address the criteria for confidentiality determinations in the incident database process if a manufacturer requests confidential treatment of information in a report. To that end, SDA urges the consideration of, among other options, coded identifiers and other devices to protect confidential business information.

SDA strongly urges the consideration of these comments and appreciates the attention of the Commission to these issues. Should you or your staff require further assistance please contact me at [dtroutman@sdahq.org](mailto:dtroutman@sdahq.org) or (202) 662-2508.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Douglas Troutman', is written over the printed name.

Douglas Troutman  
Director, Government Affairs